

IC 8-1-2

Chapter 2. Utility Regulation

IC 8-1-2-1

Definitions

Sec. 1. (a) "Public utility", as used in this chapter, means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the:

- (1) conveyance of telegraph or telephone messages;
- (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate any of the foregoing facilities.

(b) "Municipal council", as used in this chapter, means the legislative body of any town or city in Indiana wherein the property of the public utility or any part thereof is located.

(c) "Municipality", as used in this chapter, means any city or town of Indiana.

(d) "Rate", as used in this chapter, means every individual or joint rate, fare, toll, charge, rental, or other compensation of any utility or any two (2) or more such individual or joint rates, fares, tolls, charges, rentals, or other compensation of any utility or any schedule or tariff thereof, but nothing in this subsection shall give the commission any control, jurisdiction, or authority over the rate charged by a municipally owned utility except as in this chapter expressly provided.

(e) "Service" is used in this chapter in its broadest and most inclusive sense and includes not only the use or accommodation afforded consumers or patrons but also any product or commodity furnished by any public or other utility and the plant, equipment, apparatus, appliances, property, and facility employed by any public or other utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public or other utility is engaged and to the use and accommodation of the public.

(f) "Commission", as used in this chapter, means the commission created by IC 8-1-1-2.

(g) "Utility", as used in this chapter, means every plant or equipment within the state used for:

- (1) the conveyance of telegraph and telephone messages;
- (2) the production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to the public; or
- (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and

industrial waste.

The term does not include a municipality that may acquire, own, or operate facilities for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste. A warehouse owned or operated by any person, firm, limited liability company, or corporation engaged in the business of operating a warehouse business for the storage of used household goods is not a public utility within the meaning of this chapter.

(h) "Municipally owned utility", as used in this chapter, includes every utility owned or operated by a municipality.

(i) "Indeterminate permit", as used in this chapter, means every grant, directly or indirectly from the state, to any corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, of power, right, or privilege to own, operate, manage, or control any plant or equipment, or any part of a plant or equipment, within this state, for the:

(1) production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to or for the public;

(2) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste; or

(3) furnishing of facilities for the transmission of intelligence by electricity between points within this state;

which shall continue in force until such time as the municipality shall exercise its right to purchase, condemn, or otherwise acquire the property of such public utility, as provided in this chapter, or until it shall be otherwise terminated according to law.

(Formerly: Acts 1913, c.76, s.1a; Acts 1955, c.37, s.1; Acts 1957, c.313, s.1.) As amended by P.L.59-1984, SEC.8; P.L.384-1987(ss), SEC.5; P.L.8-1989, SEC.38; P.L.8-1993, SEC.105; P.L.91-1995, SEC.2.

IC 8-1-2-2

Legal counsel for commission

Sec. 2. The attorney-general shall be the legal counsel for the commission and shall prosecute all cases in which the commission may be interested. He shall advise the commission in legal matters arising in the discharge of their duties and shall represent the commission in all suits to which the commission is a party. The attorney-general shall have the right to call upon the prosecuting attorney of any county or the legal officers of any city to assist in the prosecution or defense of any case in their county or city to which the commission may be a party, and it shall be the duty of such prosecuting attorney or legal officer to give such assistance as may be required by the attorney general.

(Formerly: Acts 1913, c.76, s.3; Acts 1917, c.16, s.1.)

IC 8-1-2-3 Repealed

(Repealed by P.L.89-1985, SEC.14.)

IC 8-1-2-4

Services to public; rates and charges

Sec. 4. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any service rendered or to be rendered either directly or in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful. The commission, in order to expedite the determination of rate questions, or to avoid unnecessary and unreasonable expense, or to avoid discrimination in rates between classes of customers, or, whenever in the judgment of the commission public interest so requires, may, for ratemaking and accounting purposes, or either of them, consider a single municipality and/or two (2) or more municipalities and/or the adjacent and/or intervening rural territory as a regional unit where the same utility serves such region, and may within such region prescribe uniform rates for consumers or patrons of the same class. Nothing in this chapter contained shall authorize any public utility during the remainder of the term of any grant or franchise under which it may be acting on May 1, 1913, to charge for any service, in such grant or franchise contracted, exceeding the maximum rate or rates therefor, if any, that may be fixed in such grant or franchise.

(Formerly: Acts 1913, c.76, s.7; Acts 1933, c.190, s.2.) As amended by P.L.59-1984, SEC.10.

IC 8-1-2-5

Joint use of facilities; physical connections with facilities and equipment

Sec. 5. (a) Every public utility, and every municipality, and every person, association, limited liability company, or corporation having tracks, conduits, subways, poles, or other equipment on, over, or under any street or highway shall for a reasonable compensation, permit the use of the same by any other public utility or by a municipality owning or operating a utility, whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owner or other users of such equipment, nor in any substantial detriment to the service to be rendered by such owners or other users. Every public utility for the conveyance of telephone messages shall permit a physical connection or connections to be made, and telephone service to be furnished, before any telephone system operated by it, and the telephone toll line operated by another such public utility or between its toll line and the telephone system of another such public utility, or between its toll line and the toll line of another such public utility, or between its telephone system and the telephone system of another such public utility, whenever public convenience and necessity require such physical connection or connections and such physical connection or

connections will not result in irreparable injury to the owner or other users of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such public utilities. If any prospective consumers or patrons of any public utility for the production, transmission, delivery, or furnishing of light or power, living in territory outside of cities and towns, and within not to exceed one-half (1/2) mile of the transmission line of such utility, shall agree to and shall construct and install the necessary equipment, in compliance with plans and specifications prescribed by such utility, such public utility shall permit the necessary physical connection or connections to be made and service to be furnished to the person or persons who have constructed and installed such equipment. The term "physical connection", as used in this section, shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between such public utilities.

(b) In case of failure to agree upon such use or the conditions or compensations for such use, or in case of failure to agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, any public utility or any person, association, limited liability company, or corporation interested may apply to the commission and if after investigation the commission shall ascertain that public convenience and necessity require such use or such physical connections, and that such use or such physical connection or connections would not result in irreparable injury to the owner or other users of such equipment or the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such owner or other public utilities or other users of such equipment or facilities, it shall by order direct that such use be permitted and prescribe reasonable conditions and compensations for such joint use and that such physical connection or connections be made and determine how and within what time such connection or connections shall be made, and by whom the expense of making and maintaining such connection or connections shall be paid.

(c) Such use so ordered shall be permitted, and such physical connection or connections so ordered shall be made and such conditions and compensation so prescribed for such use, and such terms and conditions upon which such physical connection or connections shall be made, as so determined, shall be lawful conditions and compensations for such use, and the lawful terms and conditions upon which such physical connection or connections shall be made, to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party as provided in sections 73 and 74 of this chapter and IC 8-1-3, and such statute so far as applicable shall apply to any action arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion.

(Formerly: Acts 1913, c.76, s.8; Acts 1933, c.190, s.3; Acts 1935, c.293, s.2.) As amended by P.L.59-1984, SEC.11; P.L.8-1993,

SEC.106.

IC 8-1-2-6

Valuation of property

Sec. 6. (a) The commission shall value all property of every public utility actually used and useful for the convenience of the public at its fair value, giving such consideration as it deems appropriate in each case to all bases of valuation which may be presented or which the commission is authorized to consider by the following provisions of this section. As one of the elements in such valuation the commission shall give weight to the reasonable cost of bringing the property to its then state of efficiency. In making such valuation, the commission may avail itself of any information in possession of the department of local government finance or of any local authorities. The commission may accept any valuation of the physical property made by the interstate commerce commission of any public utility subject to the provisions of this act.

(b) The lands of such public utility shall not be valued at a greater amount than the assessed value of said lands exclusive of improvements as valued for taxation. In making such valuation no account shall be taken of presumptive value resting on natural resources independent of any structures in relation thereto, the natural resource itself shall be viewed as the public's property. No account shall be taken of good will for presumptive values growing out of the operation of any utility as a going concern, all such values to rest with the municipality by reason of the special and exclusive grants given such utility enterprises. No account shall be taken of construction costs unless such costs were actually incurred and paid as part of the cost entering into the construction of the utility. All public utility valuations shall be based upon tangible property, that is, such property as has value by reason of construction costs, either in materials purchased or in assembling of materials into structures by the labor or (of) workers and the services of superintendents, including engineers, legal and court costs, accounting systems and transportation costs, and also including insurance and interest charges on capital accounts during the construction period. As an element in determining value the commission may also take into account reproduction costs at current prices, less depreciation, based on the items set forth in the last sentence hereof and shall not include good will, going value, or natural resources.

(c) In determining the amount of allowable operating expenses of a utility, the commission may not take into consideration or approve any expense for institutional or image building advertising, charitable contributions, or political contributions.

(Formerly: Acts 1913, c.76, s.9; Acts 1933, c.190, s.4; Acts 1947, c.307, s.1.) As amended by Acts 1979, P.L.85, SEC.1; P.L.90-2002, SEC.309.

IC 8-1-2-6.1

Indiana coal and clean coal technology; research, development,

and preconstruction expenses

Sec. 6.1. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with the combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

As added by P.L.88-1985, SEC.1. Amended by P.L.105-1989, SEC.1.

IC 8-1-2-6.6

Valuation of property; qualified pollution control property constructed before March 31, 2002

Sec. 6.6. (a) As used in this section:

"Clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

"Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

"Qualified pollution control property" means an air pollution control device on a coal burning electric generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission, that meets applicable state or federal requirements, and that is designed to accommodate the burning of coal from the geological formation known as the Illinois Basin.

"Utility" refers to any electric generating utility allowed by law to earn a return on its investment.

(b) Upon the request of a utility that began construction after October 1, 1985, and before March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction, but only if at the time of the application and thereafter:

(1) the facility burns only Indiana coal as its primary fuel source once the air pollution control device is fully operational; or

(2) the utility can prove to the commission that the utility is justified because of economic considerations or governmental requirements in utilizing some non-Indiana coal.

(c) The commission shall adopt rules under IC 4-22-2 to implement this section.

As added by P.L.88-1985, SEC.2. Amended by P.L.23-1988, SEC.21; P.L.105-1989, SEC.2; P.L.159-2002, SEC.3.

IC 8-1-2-6.7

Depreciation of clean coal technology

Sec. 6.7. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces airborne emissions of sulfur or nitrogen based pollutants associated with the combustion or use of coal; and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of

Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) The commission shall allow a public or municipally owned electric utility that incorporates clean coal technology to depreciate that technology over a period of not less than ten (10) years or the useful economic life of the technology, whichever is less and not more than twenty (20) years if it finds that the facility where the clean coal technology is employed:

(1) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(2) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal;

after the technology is in place.

As added by P.L.105-1989, SEC.3.

IC 8-1-2-6.8

Valuation of property; qualified pollution control property constructed after March 31, 2002

Sec. 6.8. (a) This section applies to a utility that begins construction of qualified pollution control property after March 31, 2002.

(b) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, "qualified pollution control property" means an air pollution control device on a coal burning energy generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission and that meets applicable state or federal requirements.

(d) As used in this section, "utility" refers to any energy generating utility allowed by law to earn a return on its investment.

(e) Upon the request of a utility that begins construction after March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction.

(f) The commission shall adopt rules under IC 4-22-2 to implement this section.

As added by P.L.159-2002, SEC.4.

IC 8-1-2-7

Valuation of property; hearings

Sec. 7. Before final determination of such value, the commission shall, after notice to the public utility, hold a public hearing as to such valuation in the manner prescribed for a hearing in sections 54 through 67 of this chapter, and the provisions of such sections so far as applicable shall apply to such hearing.

(Formerly: Acts 1913, c.76, s.10.) As amended by P.L.59-1984, SEC.12.

IC 8-1-2-8

Valuation of property; expenses; orders

Sec. 8. (a) The commission, within five (5) days after any such valuation is determined, shall deliver a written statement thereof to the public utility interested and a copy thereof to the clerk of each municipality in which any part of the plant or equipment of such utility is located. In such statement, the commission shall declare and fix the reasonable and necessary expenses incurred by it in making such valuation, and, within twenty (20) days thereafter, the utility shall pay into the treasury of the state the amount of the expenses so declared and fixed.

(b) The commission shall not make any order, based on any such valuation, increasing any rate of any public utility until such expenses have been paid. All such moneys paid into the treasury of the state are hereby appropriated to the commission until and including September 30, 1925, to defray its expenses until said date and thereafter shall be paid into the general fund of the state.

(Formerly: Acts 1913, c.76, s.11; Acts 1925, c.63, s.1.) As amended by P.L.23-1988, SEC.22.

IC 8-1-2-9

Valuation of property; revaluation

Sec. 9. The commission may, at any time, on its own initiative, make a revaluation of such property.

(Formerly: Acts 1913, c.76, s.12.)

IC 8-1-2-10

Accounting systems

Sec. 10. Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. In formulating a system of accounting for any class of public utilities, the commission shall consider any system of accounting established by any federal law, commission or department and any system authorized by a national association of such utilities.

(Formerly: Acts 1913, c.76, s.13.)

IC 8-1-2-11

Accounts and accounting; other subsidiary business

Sec. 11. Every public utility engaged, directly or indirectly, in any other or subsidiary business shall, if ordered by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such business, in which case all the provisions of this chapter shall apply with like force and effect to the books, accounts, papers, and records of such other business; provided, every public utility may, with consent of the commission and the proper local authorities, furnish to all patrons or persons applying therefor any service, product, or commodity which it creates as a necessary incident and subsidiary to its main or primary business. No such consent shall be granted except as provided in section 86 of this chapter, and every such subsidiary business shall be subject to all the provisions of this chapter.

(Formerly: Acts 1913, c.76, s.14.) As amended by P.L.59-1984, SEC.13.

IC 8-1-2-12

Books, accounts, papers, and records

Sec. 12. The commission shall prescribe the forms of all books, accounts, papers and records required to be kept, and every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the commission and to comply with all directions of the commission relating to such books, accounts, papers and records.

(Formerly: Acts 1913, c.76, s.15.)

IC 8-1-2-13

Forms; conduct of business

Sec. 13. The commission shall cause to be prepared suitable blanks for carrying out the purpose of this chapter and shall, when necessary, furnish such blanks to each public utility.

(Formerly: Acts 1913, c.76, s.16.) As amended by P.L.59-1984, SEC.14.

IC 8-1-2-14

Books, accounts, papers, or records; approval of system

Sec. 14. No public utility shall keep any other books, accounts, papers or records of the business transacted than those prescribed or approved by the commission, unless required by other public authority.

(Formerly: Acts 1913, c.76, s.17.)

IC 8-1-2-15

Books, accounts, papers, or records; removal from state; directors; residence

Sec. 15. Each public utility shall have an office in one (1) of the towns or cities in this state in which its property or some part thereof is located, and shall keep in said office all books, accounts, papers,

and records as shall be required by the commission to be kept within the state. No books, accounts, papers, or records required by the commission to be kept within the state shall be at any time removed from this state, except upon such conditions as may be prescribed by the commission. A majority in number of the board of directors of each and every company or association organized under Indiana statutes and coming under the provisions of this chapter shall be bona fide residents and citizens of the state of Indiana while acting as such directors.

(Formerly: Acts 1913, c.76, s.18; Acts 1915, c.110, s.1.) As amended by P.L.59-1984, SEC.15.

IC 8-1-2-16

Accounts; closing date; filing with commission

Sec. 16. The accounts shall be closed annually on the thirty-first day of December, and a balance sheet of that date promptly taken therefrom. On or before the thirtieth day of April following, such balance sheet, together with such other information as the commission shall prescribe, verified by an officer of the public utility, shall be filed with the commission.

(Formerly: Acts 1913, c.76, s.19; Acts 1917, c.150, s.1.) As amended by Acts 1979, P.L.84, SEC.3; P.L.103-1983, SEC.2.

IC 8-1-2-17

Accounts; examination and audit

Sec. 17. The commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission.

(Formerly: Acts 1913, c.76, s.20.)

IC 8-1-2-18

Books, accounts, papers, records, and memoranda; inspection and examination

Sec. 18. The agents, accountants or examiners employed by the commission shall have authority, under the direction of the commission, to inspect and examine any and all books, accounts, papers, records and memoranda kept by such public utility.

(Formerly: Acts 1913, c.76, s.21.)

IC 8-1-2-19

Depreciation account

Sec. 19. Every public utility shall carry a separate, proper and adequate depreciation account whenever the commission, after investigation, shall determine that such depreciation account reasonably can be required. The commission, from time to time, shall ascertain and determine the proper and adequate rates of depreciation of the several classes of property of each public utility. The rates, tolls and charges shall be such as will provide the amounts required over and above the reasonable and necessary operating expenses, to maintain such property in an operating state of efficiency

corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates, so ascertained and determined by the commission. The commission shall make changes in such rates of depreciation, from time to time, as it may find necessary.

(Formerly: Acts 1913, c.76, s.22; Acts 1925, c.64, s.1.)

IC 8-1-2-20

Depreciation account; rules, regulations, and forms

Sec. 20. The commission shall also prescribe rules, regulations and forms of accounts regarding such depreciation, which the public utility is required to carry into effect.

(Formerly: Acts 1913, c.76, s.23.)

IC 8-1-2-21

Depreciation; rates, tolls, and charges

Sec. 21. The commission shall provide for such depreciation in fixing the rates, tolls and charges to be paid by the public.

(Formerly: Acts 1913, c.76, s.24.)

IC 8-1-2-22

Depreciation fund; management

Sec. 22. All money thus provided shall be set aside out of the earnings and carried in a separate depreciation fund. The money in this fund shall be applied first to depreciation expenses. Any balance in the fund, not applied to depreciation expenses, may be invested by the public utility or expended temporarily by it for new construction, extensions or additions to its utility property. This fund shall be used for no other purpose. If invested, the income from the investment shall be carried into and become a part of the depreciation fund. Any balance, not applied to depreciation expenses, shall always remain a part of the depreciation fund. In no event shall moneys, temporarily expended from this fund for new construction, extensions or additions to the property, be carried into or considered a part of the capital account of such public utility. Upon the sale of any public utility property, to continue in operation as such, the balance in the depreciation fund, unexpended for depreciation expenses, shall be transferred to the purchaser and by the purchaser shall be held, administered and used as herein authorized and required.

(Formerly: Acts 1913, c.76, s.25; Acts 1925, c.64, s.2.)

IC 8-1-2-23

Construction accounts; additions or extension; approval by commission

Sec. 23. The commission shall keep itself informed of all new construction, extensions and additions to the property of such public utility and shall prescribe the necessary forms, regulations and instructions to the officers and employees of such public utility for the keeping of construction accounts which shall clearly distinguish all operating expenses and new construction. Unless a public utility

shall obtain the approval by the commission of any expenditure exceeding ten thousand dollars (\$10,000) for an extension, construction, addition or improvement of its plant and equipment, the commission shall not, in any proceeding involving the rates of such utility, consider the property acquired by such expenditures as a part of the rate base, unless in such proceeding the utility shall show that such property is in fact used and useful in the public service; Provided, That the commission in its discretion may authorize the expenditure for such purpose of a less amount than shown in such estimate.

(Formerly: Acts 1913, c.76, s.26; Acts 1933, c.190, s.5.)

IC 8-1-2-24

Surplus profits; division or distribution; sliding scale of charges

Sec. 24. Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees, or with any municipality in which any of its property is located, for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter. Such arrangement shall be under the supervision and regulation of the commission.

(Formerly: Acts 1913, c.76, s.27.) As amended by P.L.59-1984, SEC.16.

IC 8-1-2-25

Rates and charges; rules and regulations involving changes

Sec. 25. The commission shall ascertain, determine and order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to revoke its approval and amend or rescind all orders relative thereto, is reserved and vested in the commission, notwithstanding any such arrangement and mutual agreement.

(Formerly: Acts 1913, c.76, s.28.)

IC 8-1-2-26

Financial statements and accounts

Sec. 26. Each public utility shall furnish to the commission in such form and at such time as the commission shall require, such accounts, reports, and information as will show in itemized detail:

- (1) the depreciation per unit;
- (2) the salaries and wages separately per unit;
- (3) legal expenses per unit;
- (4) taxes and rentals separately per unit;
- (5) the quantity and value of material used per unit;

- (6) the receipts from residuals, byproducts, services or other sales, separately per unit;
- (7) the total and net cost per unit;
- (8) the gross and net profit per unit;
- (9) the dividends and interest per unit;
- (10) surplus or reserve per unit;
- (11) the prices per unit paid by consumer;
- (12) names of, and amount of fees paid to, legal counsel who are not employees;
- (13) names of, and amount of fees paid to, other consultants; and
- (14) such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing the unit of its product or service for the public.

(Formerly: Acts 1913, c.76, s.29.) As amended by P.L.103-1983, SEC.1.

IC 8-1-2-27

Repealed

(Repealed by Acts 1979, P.L.17, SEC.55.)

IC 8-1-2-28

Repealed

(Repealed by Acts 1979, P.L.17, SEC.55.)

IC 8-1-2-29

Public inspection of commission reports, files, and records; access of parties to relevant rate information

Sec. 29. (a) All facts and information in the possession of the commission and all reports, records, files, books, accounts, papers, and memoranda of every nature whatsoever in its possession shall be open to inspection by the public at all reasonable times subject to IC 5-14-3.

(b) Nothing in this section shall be construed to limit the access of parties to rate and finance proceedings before the commission to information in the possession of another party that is relevant to the issues in the proceeding.

(Formerly: Acts 1913, c.76, s.32.) As amended by P.L.59-1984, SEC.17; P.L.88-1985, SEC.3; P.L.114-1987, SEC.1.

IC 8-1-2-30

Repealed

(Repealed by P.L.12-1984, SEC.6.)

IC 8-1-2-31

Repealed

(Repealed by P.L.114-1987, SEC.2.)

IC 8-1-2-32**Standard commercial units of product or service**

Sec. 32. The commission shall ascertain and prescribe for each kind of public utility suitable and convenient standard commercial units of product or service. These shall be lawful units for the purpose of this chapter.

(Formerly: Acts 1913, c.76, s.35.) As amended by P.L.59-1984, SEC.18.

IC 8-1-2-33**Standard measurements for units of product or service**

Sec. 33. The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any public utility and prescribe reasonable regulations for examinations and testing of such product or service and for the measurement thereof.

(Formerly: Acts 1913, c.76, s.36.)

IC 8-1-2-34**Meters and measuring appliances; specifications and standards**

Sec. 34. The commission shall establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto. Nothing contained in this section shall limit in any manner any powers or authority vested in municipal corporations as provided in section 101 of this chapter.

(Formerly: Acts 1913, c.76, s.37.) As amended by P.L.59-1984, SEC.19.

IC 8-1-2-34.5**Customer service; determination of complaints**

Sec. 34.5. (a) The Commission shall establish reasonable rules and regulations to govern the relations between public utilities and any or all classes of their customers. Those rules and regulations shall cover the following subjects:

- (1) extension of service;
- (2) extension of credit;
- (3) deposits, including interest thereon;
- (4) billing procedures;
- (5) termination of service;
- (6) complaints; and
- (7) information and notice to customers of their rights under the rules.

(b) Notwithstanding IC 8-1-2-54, the commission may investigate and enter orders on complaints filed by individual customers arising under this section. The commission may establish an appeals division to act on its own behalf regarding individual customer complaints. The decision of the division shall be binding on all parties to the

complaint. The commission shall review decisions of the appeals division upon timely request by an affected party.

(c) This section does not invalidate any rule or regulation adopted by the commission before July 1, 1979, to govern the relations between public utilities and their consumers if the rule or regulation is consistent with this section.

As added by Acts 1979, P.L.85, SEC.2.

IC 8-1-2-35

Meters and measuring appliances; testing

Sec. 35. The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance or rate be found unreasonably defective or incorrect to the disadvantage of the consumer or user.

(Formerly: Acts 1913, c.76, s.38.)

IC 8-1-2-36

Meters and measuring instruments; purchase by commission for examinations and tests

Sec. 36. The commission may purchase such material, apparatus and standard measuring instruments for such examinations and tests as it may deem necessary.

(Formerly: Acts 1913, c.76, s.39.)

IC 8-1-2-36.5

Installation of submetering equipment for individual units; adoption of rules

Sec. 36.5. (a) As used in this section, "building" means any building containing more than one (1) residential unit, including trailer courts and similar multiple user installations, but does not include hotels, motels, or other similar transient lodging.

(b) Notwithstanding any other law, any owner, operator, or manager of a building in which:

- (1) units of the building are separately rented or leased; and
- (2) units of the building are not individually metered for electricity because the building is exempt from commission rules on master metering or for any other lawful reason;

may install kilowatt hour submetering equipment for each individual dwelling unit to fairly allocate the cost of each individual dwelling unit's electrical consumption and charge the tenant of the dwelling unit for that consumption.

(c) The submetering equipment shall be used to measure the number of kilowatt hours used by a tenant during a particular billing period. The amount that a tenant owes is equal to:

(1) the total number of kilowatt hours consumed by the tenant during a particular billing period; multiplied by

(2) a fraction, the numerator of which is the total electric bill for a master meter, and the denominator of which is the total kilowatt hours consumed on a master meter, all for the same billing period as in subdivision (1).

The total electric bill for a master meter, in addition to the rate per kilowatt hour, includes any sales tax, demand charges, energy component charges, and any other taxes or charges that are lawfully applied to the bill. The owner, operator, or manager of a building or buildings served by a master meter may not impose on the tenant any extra charges over and above the total electric bill for a master meter (which includes the rate per kilowatt hour and any lawful taxes or charges, but does not include a late payment charge) for a particular billing period than is charged to the owner, operator, or manager of a building or buildings served by a master meter.

(d) The commission shall adopt rules in accordance with IC 4-22-2 to govern the following:

(1) Maintenance of adequate records by the owner, operator, or manager of a building or buildings served by a master meter.

(2) Accuracy, testing, and recordkeeping associated with the submeters.

(3) Complaints of violations of this section, filed with and investigated by the consumer affairs department of the commission.

(4) Procedures for the installation of submetering equipment.

(5) Procedures for hearings on complaints filed under subdivision (3).

(6) Any other rules necessary to carry out this section.

(e) In the hearings on complaints under subsection (d)(5), the commission's authority is limited solely to a determination of whether a violation did in fact occur.

(f) The commission shall adopt rules in accordance with IC 4-22-2 to carry out this section.

As added by P.L.60-1984, SEC.1. Amended by P.L.7-1987, SEC.11; P.L.23-1988, SEC.23.

IC 8-1-2-37

Entry on property; testing meters and measuring instruments

Sec. 37. The commission, its agents, experts, or examiners shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this chapter and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor.

(Formerly: Acts 1913, c.76, s.40.) As amended by P.L.59-1984, SEC.20.

IC 8-1-2-38

Filing schedule of rates and charges

Sec. 38. Every public utility shall file with the commission, within

a time fixed by the commission, schedules, which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are enforced at the time for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls and charges shown on such schedules shall not exceed, without the consent of the commission, the rates, tolls and charges in force January 1, 1913.

(Formerly: Acts 1913, c.76, s.41.)

IC 8-1-2-39

Filing schedule of rates and charges; rules and regulations to accompany

Sec. 39. Every public utility shall file, with and as a part of such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service.

(Formerly: Acts 1913, c.76, s.42.)

IC 8-1-2-40

Copies of schedule; public inspection

Sec. 40. A copy of so much of said schedule as the commission shall deem necessary for the use of the public shall be printed in plain type, and kept on file in every station or office of such public utility where payments are made by the consumers or users, open to the public in such form and place as to be readily accessible to the public and as can be conveniently inspected.

(Formerly: Acts 1913, c.76, s.43.)

IC 8-1-2-41

Schedule of joint rates and charges; printing

Sec. 41. Where a schedule of joint rates or charges is or may be in force between two (2) or more public utilities, such schedules shall, in like manner, be printed and filed with the commission and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as provided in sections 38 and 40 of this chapter.

(Formerly: Acts 1913, c.76, s.44.) As amended by P.L.59-1984, SEC.21.

IC 8-1-2-42

Changes in schedules

Sec. 42. (a) No change shall be made in any schedule, including schedules of joint rates, except upon thirty (30) days notice to the commission, and approval by the commission, and all such changes shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof thirty (30) days prior to the time the same are to take effect. The commission may prescribe a shorter time within which a change may be made. A public, municipally owned, or cooperatively owned utility may not file a request for a general increase in its basic rates and charges within fifteen (15) months after

the filing date of its most recent request for a general increase in its basic rates and charges, except that the commission may order a more timely increase if:

- (1) the requested increase relates to a different type of utility service;
- (2) the commission finds that the utility's financial integrity or service reliability is threatened; or
- (3) the increase is based on:
 - (A) a rate structure previously approved by the commission;
 - or
 - (B) orders of federal courts or federal regulatory agencies having jurisdiction over the utility.

The phrase "general increase in basic rates and charges" does not include changes in rates related solely to the cost of fuel or to the cost of purchased gas or purchased electricity or adjustments in accordance with tracking provisions approved by the commission.

(b) No schedule of rates, tolls, and charges of a public, municipally owned, or cooperatively owned utility which includes or authorizes any changes in charges based upon costs is effective without the approval of the commission. Before the commission approves any changes in the schedule of rates, tolls, and charges of an electric utility, which generates and sells electricity, based upon the cost of fuel to generate electricity or upon the cost of fuel included in the cost of purchased electricity, the utility consumer counselor shall examine the books and records of the public, municipally owned, or cooperatively owned generating utility to determine the cost of fuel upon which the proposed charges are based. In addition, before such a fuel cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the fuel charge. The utility consumer counselor shall conduct his review and make a report to the commission within twenty (20) days after the utility's request for the fuel cost charge is filed. The commission shall hold the summary hearing and issue its order within twenty (20) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a fuel cost charge or such a summary hearing.

(c) Regardless of the pendency of any request for a fuel cost charge by any electric utility, the books and records pertaining to the cost of fuel of all public, municipally owned, or cooperatively owned utilities that generate electricity shall be examined by the utility consumer counselor not less often than quarterly, and the books and records of all electric nongenerating public, municipally owned, or cooperatively owned utilities shall be examined by the utility consumer counselor not less often than annually. The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if

appropriate, request of the commission a reduction or elimination of the fuel cost charge. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(d) An electric generating utility may apply for a change in its fuel charge not more often than each three (3) months. When such application is filed the petitioning utility shall show to the commission its cost of fuel to generate electricity and the cost of fuel included in the cost of purchased electricity, for the period between its last order from the commission approving fuel costs in its basic rates and the latest month for which actual fuel costs are available. The petitioning utility shall also estimate its average fuel costs for the three (3) calendar months subsequent to the expiration of the twenty (20) day period allowed the commission in subsection (b). The commission shall conduct a formal hearing solely on the fuel cost charge requested in the petition subject to the notice requirements of IC 8-1-1-8 and shall grant the electric utility the requested fuel cost charge if it finds that:

(1) the electric utility has made every reasonable effort to acquire fuel and generate or purchase power or both so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible;

(2) the actual increases in fuel cost through the latest month for which actual fuel costs are available since the last order of the commission approving basic rates and charges of the electric utility have not been offset by actual decreases in other operating expenses;

(3) the fuel adjustment charge applied for will not result in the electric utility earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the electric utility were approved. However, subject to section 42.3 of this chapter, if the fuel charge applied for will result in the electric utility earning a return in excess of the return authorized by the commission, in the last proceeding in which basic rates and charges of the electric utility were approved, the fuel charge applied for will be reduced to the point where no such excess of return will be earned; and

(4) the utility's estimate of its prospective average fuel costs for each such three (3) calendar months are reasonable after taking into consideration:

(A) the actual fuel costs experienced by the utility during the latest three (3) calendar months for which actual fuel costs are available; and

(B) the estimated fuel costs for the same latest three (3) calendar months for which actual fuel costs are available.

(e) Should the commission at any time determine that an emergency exists that could result in an abnormal change in fuel costs, it may, in order to protect the public from the adverse effects of such change suspend the provisions of subsection (d) as to the

utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(f) Any change in the fuel cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

(g) No schedule of rates, tolls, and charges of a public, municipally owned, or cooperatively owned gas utility that includes or authorizes any changes in charges based upon gas costs is effective without the approval of the commission except those rates, tolls, and charges contained in schedules that contain specific provisions for changes in gas costs or the cost of gas that have previously been approved by the commission. Gas costs or cost of gas may include the gas utility's costs for gas purchased by it from pipeline suppliers, costs incurred for leased gas storage and related transportation, costs for supplemental and substitute gas supplies, costs incurred for exploration and development of its own sources of gas supplies and other expenses relating to gas costs as shall be approved by the commission. Changes in a gas utility's rates, tolls, and charges based upon changes in its gas costs shall be made in accordance with the following provisions:

(1) Before the commission approves any changes in the schedule of rates, tolls, and charges of a gas utility based upon the cost of the gas, the utility consumer counselor may examine the books and records of the public, municipally owned, or cooperatively owned gas utility to determine the cost of gas upon which the proposed changes are based. In addition, before such an adjustment to the gas cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the gas cost adjustment. The utility consumer counselor shall conduct his review and make a report to the commission within thirty (30) days after the utility's request for the gas cost adjustment is filed. The commission shall hold the summary hearing and issue its order within thirty (30) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a gas cost adjustment or such a summary hearing.

(2) Regardless of the pendency of any request for a gas cost adjustment by any gas utility, the books and records pertaining to cost of gas of all public, municipally owned, or cooperatively owned gas utilities shall be examined by the utility consumer

counselor not less often than annually. The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the commission a reduction or elimination of the gas cost adjustment. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(3) A gas utility may apply for a change in its gas cost charge not more often than each three (3) months. When such application is filed, the petitioning utility shall show to the commission its cost of gas for the period between its last order from the commission approving gas costs in its basic rates and the latest month for which actual gas costs are available. The petitioning utility shall also estimate its average gas costs for a recovery period of not less than the three (3) calendar months subsequent to the expiration of the thirty (30) day period allowed the commission in subdivision (1). The commission shall conduct a summary hearing solely on the gas cost adjustment requested in the petition subject to the notice requirements of IC 8-1-1-8 and may grant the gas utility the requested gas cost charge if it finds that:

(A) the gas utility has made every reasonable effort to acquire long term gas supplies so as to provide gas to its retail customers at the lowest gas cost reasonably possible;

(B) the pipeline supplier or suppliers of the gas utility has requested or has filed for a change in the costs of gas pursuant to the jurisdiction and procedures of a duly constituted regulatory authority;

(C) the gas cost adjustment applied for will not result, in the case of a public utility, in its earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the public utility were approved; however, subject to section 42.3 of this chapter, if the gas cost adjustment applied for will result in the public utility earning a return in excess of the return authorized by the commission in the last proceeding in which basic rates and charges of the gas utility were approved, the gas cost adjustment applied for will be reduced to the point where no such excess of return will be earned; and

(D) the utility's estimate of its prospective average gas costs for each such future recovery period is reasonable and gives effect to:

(i) the actual gas costs experienced by the utility during the latest recovery period for which actual gas costs are available; and

(ii) the actual gas costs recovered by the adjustment of the same recovery period.

(4) Should the commission at any time determine that an

emergency exists that could result in an abnormal change in gas costs, it may, in order to protect the public or the utility from the adverse effects of such change suspend the provisions of subdivision (3) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(5) Any change in the gas cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

(Formerly: Acts 1913, c.76, s.45; Acts 1975, P.L.75, SEC.1.) As amended by Acts 1979, P.L.85, SEC.4; P.L.43-1983, SEC.9; P.L.115-1987, SEC.1; P.L.108-1995, SEC.1.

IC 8-1-2-42.3

Calculation of relevant period; determination of reduction; exception

Sec. 42.3. (a) As used in this section, "relevant period" means the last month of the twelve (12) month test period considered in the current application before the commission under section 42(d)(3) and 42(g)(3)(c) of this chapter and extending through the longer of the:

- (1) immediately preceding fifty-nine (59) months; or
- (2) period beginning with the first full month following the last order issued by the commission in which the utility's basic rates and charges were approved.

(b) The commission shall order a reduction in the:

- (1) fuel charge applied for under section 42(d)(3) of this chapter; or
- (2) gas cost adjustment applied for under section 42(g)(3)(c) of this chapter;

only if the amount determined under subsection (c) is greater than zero.

(c) The commission shall calculate for the relevant period the sum of the differentials (both positive and negative) between the determined return and the authorized return for the respective twelve (12) month test period for each application for the relevant period, in each case as shown directly or indirectly by the commission's findings in each respective order issued under section 42(d) or 42(g) of this chapter.

(d) Consistent with subsection (b), the amount of reduction shall be determined by dividing the lesser of:

- (1) the amount determined under subsection (c); or
- (2) the amount by which the return in the current application

before the commission was more than the authorized return; by the total number of applications filed during the twelve (12) month test period considered in the current application before the commission.

(e) This section does not apply to a general district corporation within the meaning of IC 8-1-13-23(a).

As added by P.L.108-1995, SEC.2.

IC 8-1-2-42.5

Periodic review of rates and charges

Sec. 42.5. The commission shall by rule or order, consistent with the resources of the commission and the office of the utility consumer counselor, require that the basic rates and charges of all public, municipally owned, and cooperatively owned utilities (except those utilities described in IC 8-1-2-61.5) are subject to a regularly scheduled periodic review and revision by the commission. However, the commission shall conduct the periodic review at least once every four (4) years and may not authorize a filing for an increase in basic rates and charges more frequently than is permitted by operation of section 42(a) of this chapter.

As added by P.L.88-1985, SEC.4.

IC 8-1-2-43

New schedules; filing

Sec. 43. Copies of all new schedules shall be filed as hereinbefore provided in every station or office of such public utility where payments are made by consumers or users ten (10) days prior to the time the same are to take effect, unless the commission shall prescribe a less time.

(Formerly: Acts 1913, c.76, s.46.)

IC 8-1-2-44

Overcharges and undercharges

Sec. 44. It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rates, tolls, or charges not specified in such schedule. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges unless the same are changed as provided in this chapter.

(Formerly: Acts 1913, c.76, s.47.) As amended by P.L.59-1984, SEC.22.

IC 8-1-2-45

Rate schedules; changes in form

Sec. 45. The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

(Formerly: Acts 1913, c.76, s.48.)

IC 8-1-2-46

Classification of services; rates and charges

Sec. 46. The commission shall provide for a comprehensive classification of such service for each public utility and such classification may take into account the quantity used, the time when used, the purpose for which used and other reasonable consideration. Each public utility is required to conform its schedules of rates, tolls and charges to such classification.

(Formerly: Acts 1913, c.76, s.49.)

IC 8-1-2-46.1

Classification of service; rate for furnishing traction power

Sec. 46.1. In providing for a classification of service, the commission shall approve a rate for furnishing traction power for a commuter transportation system (IC 8-5-15) that is equal to or lower than the rate approved for any industrial or commercial consumer of the public utility. The rate established under this section is subject to timely payments as negotiated between the utility and the district for furnishing the traction power.

As added by P.L.385-1987(ss), SEC.1.

IC 8-1-2-47

Inspections; tests; audits and investigations; rules and regulations

Sec. 47. The commission shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings, and to regulate the mode and manner of all investigations of public utilities and other parties before it.

All hearings shall be open to the public.

(Formerly: Acts 1913, c.76, s.50.)

IC 8-1-2-48

Conduct of business; information; excessive wages; inquiry or audit of utility's power plant efficiency and system reliability

Sec. 48. (a) The commission shall inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties. If, in its inquiry into the management of any public utility, the commission finds that the amount paid for the services of its officers, employees, or any of them, is excessive, or that the number of officers or persons employed by such utility is not justified by the actual needs of the utility, or that any other item of expense is being incurred by the utility which is either unnecessary or excessive, the commission shall designate such item or items, and such item or items so designated, or such parts thereof as the commission may deem unnecessary or

excessive, shall not be taken into consideration in determining and fixing the rates which such utility is permitted to charge for the service which it renders.

(b) For purposes of IC 8-1-2, IC 8-1-8.5, IC 8-1-8.7, IC 8-1-8.8, and IC 8-1-27, wages paid to an independent contractor of a utility for construction or maintenance performed for the utility shall not be found to be excessive merely because the wages are those normally paid for work of the same type and quality in the labor market in which the work for the utility is being performed.

(c) In carrying out its duties and powers under subsection (a) with regard to any utility which sells or generates electricity, the commission may also inquire into or audit a utility's powerplant efficiency and system reliability.

(Formerly: Acts 1913, c.76, s.51; Acts 1927, c.146, s.1.) As amended by Acts 1981, P.L.104, SEC.4; P.L.53-1992, SEC.1; P.L.1-1993, SEC.47; P.L.159-2002, SEC.5.

IC 8-1-2-49

Inspection of books and records; affiliated interests; jurisdiction; annual reports

Sec. 49. (1) The commission or any commissioner when authorized by the commission or any person or persons employed by the commission for that purpose shall upon demand have the right to inspect the books, accounts, papers, records, and memoranda of any public utility and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection. The commission shall have jurisdiction over holders of the voting capital stock of all public utility companies under its jurisdiction to such extent as may be necessary to enable the commission to require the disclosure of the identity in respective interests of every owner of any substantial interest in such voting capital stock. One percent (1%) or more is a substantial interest, within the meaning of this section.

(2) Said commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with utility corporations and other utility companies under the jurisdiction of the commission, to the extent of access to all accounts and records of joint or general expenses, any portion of which may be applicable to such transactions, and to the extent of authority to require such reports to be submitted by such affiliated interests, as the commission may prescribe. For the purpose of this section only, "affiliated interests" include the following:

(a) Every corporation and person owning or holding directly or indirectly ten percent (10%) or more of the voting capital stock of such utility corporation.

(b) Every corporation and person in any chain of successive ownership of ten percent (10%) or more of voting capital stock.

(c) Every corporation ten percent (10%) or more of whose voting capital stock is owned by any person or corporation owning ten percent (10%) or more of the voting capital stock of such utility corporation or by any person or corporation in any such chain of successive ownership of ten percent (10%) or more of voting capital stock.

(d) Every person who is an officer or director of such utility corporation or of any corporation in any chain of successive ownership of ten percent (10%) or more of voting capital stock.

(e) Every corporation which has one (1) or more officers or one (1) or more directors in common with such utility corporation.

(f) Every corporation or person which the commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of such utility corporation even though such influence is not based upon stockholding, stockholders, directors, or officers to the extent specified in this section.

(g) Every person or corporation who or which the commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and actions of such utility corporation in conjunction with one (1) or more other corporations and/or persons with which or whom they are related by ownership and/or blood relationship or by action in concert that together they are affiliated with such utility corporation within the meaning of this section even though no one of them alone is so affiliated; provided, however, that no such person or corporation shall be considered as affiliated within the meaning of this section if such person or corporation is otherwise subject to the jurisdiction of the commission or such person or corporation shall not have had transactions or dealings other than the holding of stock and the receipt of dividends thereon with such utility corporation during the two (2) year period next preceding.

No management, construction, engineering, or similar contract, made after March 8, 1933, with any affiliated interest, as defined in this section, shall be effective unless it shall first have been filed with the commission. If it be found that any such contract is not in the public interest, the commission, after investigation and a hearing, is hereby authorized to disapprove such contract.

(3) Every annual report of any utility corporation reporting under this chapter to the commission shall contain, in addition to any other information required to be included by or pursuant to law, the following information:

(a) It shall state the name and address of, and the number of shares held by each holder of one percent (1%) or more of the voting capital stock of the reporting corporation, according to its records.

(b) Where one percent (1%) or more of the voting capital stock of the reporting corporation is held by a trustee or trustees, or

other intermediate agency, for the beneficial interest of an owner or owners, other than the holder of record, or where one percent (1%) or more of the voting capital stock of the reporting corporation is held by another corporation, such annual report shall state, if the information is available from the records of the reporting corporation, the name and addresses and respective interests of such beneficial owners, and the names and addresses of the officers and directors of any such other corporation and the total number of shares of capital stock thereof held by each, showing separately the number of shares of the voting capital stock, and the names and addresses and respective stockholdings of every stockholder of such other corporation holding one percent (1%) or more of its voting capital stock. Such report shall be accompanied by a certified copy of each trust agreement or other instrument under which any voting capital stock of the reporting corporation is held.

Where the information specified in subsection (3)(b) is not available from the records of the reporting corporation, any such holder, of record, of one percent (1%) or more of the voting capital stock of the reporting corporation, if ordered so to do by the commission, shall file with the commission, a sworn statement, in such form and to be filed within such time as the commission shall prescribe, setting forth whether or not any of such stock held by him or it is so held for the beneficial ownership of any person, firm, limited liability company, or corporation other than the record holder thereof, and, if stated to be so held, the names, addresses, and respective interests of such beneficial owners. If such stockholder is a trustee, he or it also shall file with such statement a certified copy of the trust agreement or other instrument under which such stock is held. A corporation which is the holder, of record, of one percent (1%) or more of the voting capital stock of the reporting corporation, if ordered so to do by the commission, and regardless of whether the information is or is not available or apparently available from the records of the reporting corporation, also shall file with the commission a sworn statement, in such form and to be filed within such time as the commission shall prescribe, or shall include in the sworn statement, if any, required to be filed by it pursuant to other provisions of this chapter a statement setting forth the names and addresses of its officers and directors and the total number of shares of its capital stock, held by each, showing separately the number of shares of the voting capital stock, and the names and addresses and respective stockholdings of each stockholder thereof holding one percent (1%) or more of its voting capital stock.

(4) If the annual report, or the sworn statements provided for in this section, do not furnish the information desired, because of any chain of successive ownership or of stockholdings, or because of an intermediate agency or agencies, or for any other reason, the commission, by order, may require similar sworn statements from any person or corporation who or which can give the necessary information, as the commission may have discovered from its

investigations, to the end that the commission may obtain a complete disclosure of the natural persons, firms, limited liability companies, or corporations and their respective interests, who or which own or control directly or indirectly one percent (1%) or more of the voting capital stock of the reporting corporation.

(Formerly: Acts 1913, c.76, s.52; Acts 1933, c.190, s.6.) As amended by P.L.59-1984, SEC.23; P.L.8-1993, SEC.107.

IC 8-1-2-50

Compelling production of books, papers, and records; offenses

Sec. 50. The commission may require, by order or subpoena to be served on any public utility in the same manner that a summons is served in a civil action in the circuit court, the production, within the state, at such time and place as it may designate, of any books, accounts, papers, or records kept by said public utility in any office or place without the state of Indiana, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction. Any public utility failing or refusing, after reasonable written notice, to comply with any such order or subpoena shall, for each day it shall so fail or refuse, forfeit and pay into the state treasury a sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

(Formerly: Acts 1913, c.76, s.53.)

IC 8-1-2-51

Investigations; commission

Sec. 51. For the purpose of making any investigation with regard to any public utility, the commission shall have power to appoint, by an order in writing, an agent, whose duties shall be prescribed in such order. In the discharge of his duties, such agent shall have every power whatsoever of an inquisitorial nature granted in this chapter to the commission. The commission may conduct any number of such investigations contemporaneously through different agents and may delegate to such agent the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all the testimony and records. The recommendations made by such agents shall be advisory only, and shall not preclude the taking of further testimony, if the commission so orders, nor further investigation.

(Formerly: Acts 1913, c.76, s.54.) As amended by P.L.59-1984, SEC.24.

IC 8-1-2-52

Information; submission to commission

Sec. 52. Every public utility shall furnish to the commission all information required by it to carry into effect the provisions of this chapter and shall make specific answers to all questions submitted by the commission.

(Formerly: Acts 1913, c.76, s.55.) As amended by P.L.59-1984,

SEC.25.

IC 8-1-2-53

Information; furnishing to commission

Sec. 53. Any public utility receiving from the commission any blanks, with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and, in case it is unable to answer any question, it shall give a good and sufficient reason for such failure, and said answers shall be verified under oath by the president, secretary, superintendent or general manager or person in charge of such public utility and returned to the commission at its office within the period fixed by the commission. Whenever required by the commission, every public utility shall deliver to the commission for examination any or all maps, profiles, contracts, reports of engineer and all documents, books, accounts, papers and records, or copies of any or all of the same, with a complete inventory of all its property in such form as the commission may direct.

(Formerly: Acts 1913, c.76, s.56.)

IC 8-1-2-54

Complaints against utilities; hearing

Sec. 54. Upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society or by any body politic or municipal organization or by ten (10) persons, firms, limited liability companies, corporations, or associations, or ten (10) complainants of all or any of the aforementioned classes, or by any public utility, that any of the rates, tolls, charges or schedules or any joint rate or rates in which such petitioner is directly interested are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act whatsoever affecting or relating to the service of any public utility, or any service in connection therewith, is in any respect unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or can not be obtained, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, measurements, practice or act, complained of, shall be entered by the commission without a formal public hearing.

(Formerly: Acts 1913, c.76, s.57.) As amended by P.L.8-1993, SEC.108.

IC 8-1-2-54.1

Actions for mandate to compel hearing or issuance of orders

Sec. 54.1. Notwithstanding any other law, if the commission fails to conduct a formal public hearing or to issue an order within a reasonable period of time upon a complaint that complies with sections 54 or 61 of this chapter, the complainant may bring an action for mandate under IC 34-27 to compel the commission to

conduct the hearing or to issue the order. However, notwithstanding IC 34-27 or any other law or rule, the action for mandate may only be filed in the court of appeals. For the purposes of IC 1-1-1-8, if any part of this section is held invalid, the entire section is void.

As added by P.L.106-1989, SEC.1. Amended by P.L.1-1998, SEC.86.

IC 8-1-2-55

Complaints against utilities; notice to utilities

Sec. 55. The commission shall, prior to such formal hearing, notify the public utility complained of that a complaint has been made, and ten (10) days after such notice has been given, the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided.

(Formerly: Acts 1913, c.76, s.58.)

IC 8-1-2-56

Complaints; notice to public utility and complainant

Sec. 56. The commission shall give the public utility and the complainant, if any, ten (10) days' notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses.

(Formerly: Acts 1913, c.76, s.59.)

IC 8-1-2-57

Complaints against utilities; separate hearings

Sec. 57. The commission may, in its discretion, when complaint is made of more than one (1) rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(Formerly: Acts 1913, c.76, s.60.)

IC 8-1-2-58

Complaints against utilities; investigations

Sec. 58. Whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate, or can not be obtained, or that an investigation of any matters relating to any public utility should for any reason be made, it may, on its motion, summarily investigate the same, with or without notice.

(Formerly: Acts 1913, c.76, s.61.)

IC 8-1-2-59

Complaints against utilities; investigations; hearing

Sec. 59. If, after making such investigation, the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matter so investigated, it shall furnish

such public utility interested a statement notifying the public utility of the matters under investigation. Ten (10) days after such notice has been given, the commission may proceed to set a time and place for a hearing and an investigation, as hereinbefore provided.

(Formerly: Acts 1913, c.76, s.62.)

IC 8-1-2-60

Complaints against utilities; hearings; decision and order

Sec. 60. Notice of the time and place for such hearing shall be given to the public utility and to such other interested persons as the commission shall deem necessary, as provided in section 56 of this chapter, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint.

(Formerly: Acts 1913, c.76, s.63.) As amended by P.L.59-1984, SEC.26.

IC 8-1-2-61

Complaint by utility; contents; notice; summary orders in certain cases; public hearings

Sec. 61. (a) Any public utility may make complaint as to any matter affecting its own rates or service. The petition or complaint must include a statement as to whether the utility, if a not-for-profit water utility or municipal utility, has any outstanding indebtedness to the federal government. The public utility shall publish a notice of the filing of such petition or complaint in a newspaper of general circulation published in any county in which the public utility renders service. An order affecting rates or service may be entered by the commission without a formal public hearing, if:

- (1) the utility is a not-for-profit water utility or a municipal utility; and
- (2) the utility has obtained written consent to obtain an order affecting its rates from the commission without a formal hearing from any agency of the federal government with which the utility has outstanding evidence of indebtedness to the federal government.

The commission may, however, on its own motion require a formal public hearing, and shall, upon a motion filed by the utility consumer counselor, by any public or municipal corporation, or by ten (10) individuals, firms, corporations, limited liability companies, or associations, or ten (10) complainants of all or any of these classes, hold a formal public hearing with respect to any such petition or complaint.

(b) In any general rate proceeding under subsection (a) which requires a public hearing and in which an increase in revenues is sought which exceeds the sum of two million five hundred thousand dollars (\$2,500,000), the commission shall conduct at least one (1) public hearing in the largest municipality located within such utility's

service area.

(Formerly: Acts 1913, c.76, s.64; Acts 1951, c.161, s.1; Acts 1963, c.187, s.1.) As amended by Acts 1979, P.L.85, SEC.3; P.L.103-1983, SEC.3; P.L.8-1993, SEC.109.

IC 8-1-2-61.5

Rate orders; formal public hearing; adoption of rules

Sec. 61.5. (a) An order affecting rates of service may be entered by the commission without a formal public hearing in the case of any public or municipally owned utility that:

- (1) serves less than five thousand (5,000) customers;
- (2) primarily provides retail service to customers; and
- (3) does not serve extensively another utility.

(b) The commission may require a formal public hearing on any petition or complaint filed under this section concerning a rate change request by a utility upon its own motion or upon motion of any of the following:

- (1) The utility consumer counselor.
- (2) A public or municipal corporation.
- (3) Ten (10) individuals, firms, limited liability companies, corporations, or associations.
- (4) Ten (10) complainants of any class described in this subsection.

(c) A not-for-profit water utility or a not-for-profit sewer utility must include in its petition a statement as to whether it has an outstanding indebtedness to the federal government. When an indebtedness is shown to exist, the commission shall require a formal hearing, unless the utility also has included in its filing written consent from the agency of the federal government with which the utility has outstanding indebtedness for the utility to obtain an order affecting its rates from the commission without a formal hearing.

(d) Notwithstanding any other provision of this chapter, the commission may:

- (1) on its own motion; or
- (2) at the request of:
 - (A) the utility consumer counselor;
 - (B) a water or sewer utility described in subsection (a);
 - (C) ten (10) individuals, firms, limited liability companies, corporations, or associations; or
 - (D) ten (10) complainants of any class described in this subsection;

adopt a rule under IC 4-22-2, or issue an order in a specific proceeding, providing for the development, investigation, testing, and use of regulatory procedures or generic standards with respect to water or sewer utilities described in subsection (a) or their services.

(e) The commission may adopt a rule or enter an order under subsection (d) only if it finds, after notice and hearing, that the proposed regulatory procedures or standards are in the public interest and promote at least one (1) of the following:

- (1) Utility cost minimalization to the extent that a utility's

quality of service or facilities are not diminished.

(2) A more accurate evaluation by the commission of a utility's physical or financial conditions or needs.

(3) A less costly regulatory procedure for a utility, its consumers, or the commission.

(4) Increased utility management efficiency that is beneficial to consumers.

As added by P.L.88-1985, SEC.5. Amended by P.L.116-1987, SEC.1; P.L.107-1989, SEC.1; P.L.8-1993, SEC.110; P.L.159-1999, SEC.1; P.L.226-2001, SEC.1.

IC 8-1-2-61.6

Water utilities with less than 5,000 customers; changes in wholesale rates; notice; rate relief

Sec. 61.6. (a) This section applies to water utilities that serve less than five thousand (5,000) customers.

(b) As used in this section, "purchaser" means a water utility that buys water from another water utility on a wholesale basis.

(c) As used in this section, "supplier" means a water utility that provides water to another water utility on a wholesale basis.

(d) As used in this section, "water utility" means:

- (1) an investor owned water utility;
- (2) a municipally owned water utility;
- (3) a conservancy district (as described in IC 14-33); or
- (4) a nonprofit water utility.

(e) Notwithstanding section 42 of this chapter, whenever a supplier petitions the commission for a change in rates or charges that affect its wholesale rates, the supplier shall notify each of its wholesale customers by United States registered mail. The notice must include the cause number assigned to the supplier's petition.

(f) Upon notification by the supplier, the purchaser of a wholesale water supply may notify the secretary of the commission of its intent to monitor its supplier's cause. The commission shall then provide a copy of the supplier's prehearing conference order upon its approval to the purchaser.

(g) If the purchaser requests simultaneous rate relief for its cost of water in conjunction with the relief requested by its supplier, the purchaser shall complete and file forms prescribed by the commission within fourteen (14) days of the supplier's case in chief.

(h) After the purchaser has filed the forms as described in subsection (g), the commission may provide rate relief to the purchaser simultaneously with an order approved for its supplier.

As added by P.L.107-1989, SEC.2. Amended by P.L.1-1995, SEC.54.

IC 8-1-2-62

Evidence; compelling production; witnesses; compelling attendance

Sec. 62. Each of the commissioners and every agent provided for in this chapter shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses,

and compel the production of books, accounts, papers, records, documents and testimony. In case of disobedience on the part of any person or persons to comply with any order of the commission or any commissioner or any subpoena, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated before the commission, or its authorized agent, it shall be the duty of the circuit or superior court of any county, on application of a commissioner, to compel the obedience to the requirements of a subpoena issued from such court or a refusal to testify therein.

(Formerly: Acts 1913, c.76, s.65.) As amended by P.L.59-1984, SEC.27.

IC 8-1-2-63

Witnesses; expenses

Sec. 63. Each witness who shall appear before the commission or its agent by its order, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of record which shall be audited and paid by the state, in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the commission. No witnesses subpoenaed at the instance of parties other than the commission shall be entitled to compensation from the state for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated; Provided, That the commission shall have power to pass upon, approve and limit the expenditures of a public utility in connection with a rate case which are to be charged against the rate base and to be amortized over a period of years as determined by the commission; it being the intent and purpose to prevent excessive expenditures by the utilities for expert witnesses, legal and stenographic expenses in rate hearings and appraisals.

(Formerly: Acts 1913, c.76, s.66; Acts 1933, c.190, s.7.)

IC 8-1-2-64

Witnesses; depositions

Sec. 64. The commission, or any party, may, in any investigation, cause the depositions of witnesses residing without the state to be taken in the manner prescribed by law for like depositions in civil actions in circuit courts.

(Formerly: Acts 1913, c.76, s.67.)

IC 8-1-2-65

Record of investigations

Sec. 65. A record shall be kept of all proceedings had before the commission or its agent or any formal investigation had and all testimony shall be taken down by the stenographer appointed by the commission.

(Formerly: Acts 1913, c.76, s.68.)

IC 8-1-2-66

Investigations; transcript of evidence; admissibility

Sec. 66. A transcript copy of the evidence and proceedings, or any specific part thereof, on any investigation, taken by the stenographer appointed by the commission, being certified under oath by such stenographer to be a true and correct transcript of all the testimony on the investigation, of a particular witness or of other specific part thereof, carefully prepared by him from his original notes, and to be a correct statement of the evidence and proceedings had on such investigations so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified.

(Formerly: Acts 1913, c.76, s.70.)

IC 8-1-2-67**Investigations; transcript of evidence; copy**

Sec. 67. A copy of such transcript shall be furnished on terms fixed by the commission to any party to such investigation.

(Formerly: Acts 1913, c.76, s.71.)

IC 8-1-2-68**Rates and charges; order fixing**

Sec. 68. Whenever, upon an investigation, the commission shall find any rates, tolls, charges, schedules, or joint rate or rates to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of this chapter, the commission shall determine and by order fix just and reasonable rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed in the future in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory or preferential or otherwise in violation of any of the provisions of this chapter.

(Formerly: Acts 1913, c.76, s.72.) As amended by P.L.59-1984, SEC.28.

IC 8-1-2-69**Complaints against utilities; orders of commission**

Sec. 69. Whenever, upon the investigation made under the provisions of this chapter, the commission shall find any regulations, measurements, practices, acts, or service to be unjust, unreasonable, unwholesome, unsanitary, unsafe, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of this chapter, or shall find that any service is inadequate or that any service which can be reasonably demanded can not be obtained, the commission shall determine and declare and by order fix just and reasonable measurements, regulations, acts, practices, or service to be furnished, imposed, observed, and followed in the future in lieu of those found to be unjust, unreasonable, unwholesome, unsanitary, unsafe, insufficient, preferential, unjustly discriminatory, inadequate, or otherwise in violation of this chapter, as the case may be, and shall make such other order respecting such measurement, regulation, act,

practice, or service as shall be just and reasonable.
(Formerly: Acts 1913, c.76, s.73.) As amended by P.L.59-1984, SEC.29.

IC 8-1-2-70

Expenses of investigations

Sec. 70. In its order upon any investigation made under the provisions of this chapter, either upon complaint against any municipal utility, or upon the petition of any such municipal utility, or upon the initiation of the commission, the commission shall ascertain and declare the expenses incurred by it upon such investigation, and the municipal utility affected thereby shall pay into the treasury of the state the amount of the expenses, so ascertained and declared, within a time to be fixed in the order, not exceeding twenty (20) days from the date thereof. The commission shall cause a certified copy of all such orders to be delivered to an officer or agent of the municipal utility affected thereby, and all such orders shall, of their own force, take effect and become operative twenty (20) days after service thereof unless a different time be provided in said order. Any order of the commission as may increase any rate of such municipal utility shall not take effect until such expenses are paid into the state treasury.

(Formerly: Acts 1913, c.76, s.74; Acts 1925, c.60, s.1; Acts 1963, c.187, s.2; Acts 1969, c.260, s.1.) As amended by P.L.59-1984, SEC.30; P.L.384-1987(ss), SEC.6.

IC 8-1-2-71

Rate schedules; changes

Sec. 71. All public utilities to which the order applies shall make such changes in their schedule on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any public utility in any such rates, tolls, or charges, or any joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the public utility affected thereby in like manner and the same shall take effect within such time thereafter as the commission shall prescribe.
(Formerly: Acts 1913, c.76, s.75.)

IC 8-1-2-72

Orders; rescission; modification

Sec. 72. The commission may, at any time, upon notice to the public utility and after opportunity to be heard as provided in sections 54 through 67 of this chapter, rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the commission, and certified copies of the same shall be served and take effect as provided in this chapter for original orders.

(Formerly: Acts 1913, c.76, s.76.) As amended by P.L.59-1984, SEC.31.

IC 8-1-2-73**Burden of proof; proceedings against utilities**

Sec. 73. In all trials, actions, and proceedings arising under the provisions of this chapter or growing out of the exercise of the authority and powers granted in this chapter to the commission, the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction, or order of said commission to show that the determination, requirement, direction, or order of the commission complained of is unreasonable or unlawful, as the case may be.

(Formerly: Acts 1913, c.76, s.84.) As amended by P.L.59-1984, SEC.32.

IC 8-1-2-74**Investigations; self-incrimination**

Sec. 74. No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this chapter on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him would incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence; provided, that no person testifying shall be exempted from prosecution or punishment for perjury in so testifying.

(Formerly: Acts 1913, c.76, s.86.) As amended by P.L.59-1984, SEC.33.

IC 8-1-2-75**Orders of commission; distribution of copies**

Sec. 75. Upon application of any person, the commission shall furnish certified copies, under the seal of the commission, of any order made by it, which shall be prima facie evidence of the facts stated therein.

(Formerly: Acts 1913, c.76, s.87.)

IC 8-1-2-75.5**Telegraph utility stocks, bonds, commercial paper, and other evidences of indebtedness; authority to issue**

Sec. 75.5. Any public utility within this state organized for the conveyance of messages by telegraph may issue stocks, bonds, commercial paper, or other evidences of indebtedness without the approval of the commission. Such a public utility is exempt from the provisions of sections 76, 77, 78, 79, and 80 of this chapter.

As added by Acts 1980, P.L.66, SEC.1.

IC 8-1-2-76**Stocks, bonds, commercial paper, and other evidences of indebtedness; limitations upon authority to issue**

Sec. 76. No public utility shall hereafter issue for any purposes connected with or relating to any part of its business, any stocks, certificates of stock, bonds, notes or other evidences of indebtedness, payable at periods of more than twelve (12) months, to an amount exceeding that which may from time to time be reasonably necessary, determined as herein provided, for the purpose for which issue of stock, certificates of stock, bonds, notes or other evidences of indebtedness may be authorized.

(Formerly: Acts 1913, c.76, s.88.)

IC 8-1-2-77

Stock; consideration; discount or premium

Sec. 77. No public utility shall issue any stock or certificate of stock, except in consideration of money or of labor or property at its current fair cash value as found and determined by the commission actually received by it. No stock or certificate of stock shall be sold at a discount or premium without the approval of the commission and if sold at a discount, the commission shall make a record thereof and give such publicity of the facts as it may deem necessary at the expense of the utility. No public utility shall issue any bonds, notes, or other evidences of indebtedness except for money or labor or property estimated at its current fair cash value as found and determined by the commission actually received by it equal to a sum to be approved by the commission not less than seventy-five (75) per cent of the face value thereof. The amount of bonds, notes, and other evidences of indebtedness which any public utility may issue shall be reasonable in aggregate amount, due consideration being given to the nature of the business in which the corporation is engaged, its credit, future prospects, and earnings, and the effect which such issue may have upon the management and efficient operation of the public utility.

(Formerly: Acts 1913, c.76, s.89; Acts 1933, c.190, s.7a; Acts 1939, c.19, s.1; Acts 1941, c.37, s.1.)

IC 8-1-2-78

Stocks, bonds, commercial paper, and other evidences of indebtedness; authority to issue

Sec. 78. A public utility, as defined in section 1 of this chapter, may, with the approval of the commission, issue stock, certificates of stock, bonds, notes, or other evidence of indebtedness payable at periods of more than twelve (12) months after the date thereof, for the purpose of and to the extent required for obtaining funds sufficient for:

- (a) the acquisition of property, material, or working capital;
- (b) the construction, completion, extension, or improvement of its facilities, plant, or distributing system;
- (c) the improvement of its service;
- (d) the discharge or lawful refunding of its obligations; or
- (e) the reimbursement of its treasury for money actually expended from income, or from any other money in the treasury

of the public utility, for such purposes, not secured or obtained from the issue of stock, bonds, notes, or other evidence of indebtedness of such public utility, where the applicant shall have kept its accounts and vouchers of such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purpose for which such expenditure was made.

(Formerly: Acts 1913, c.76, s.90; Acts 1939, c.19, s.2; Acts 1941, c.37, s.2.) As amended by P.L.59-1984, SEC.34.

IC 8-1-2-79

Securities; issuance; approval; fraud; offense

Sec. 79. (a) Whenever a public utility desires to issue bonds, notes or other evidences of indebtedness, payable more than one (1) year from the execution thereof, or preferred or common stock, it shall file with the commission a petition verified by its president or vice-president, and secretary or assistant secretary, or by two (2) of its incorporators, if it has no such officers, setting forth:

- (1) the principal amount of bonds, notes, or other evidences of indebtedness, and the par value or number of shares of preferred and common stock;
- (2) the minimum price for which said securities are to be disposed of or sold;
- (3) the purposes for which said securities are to be disposed of or sold;
- (4) the description, cost, or value of any property acquired or to be acquired from the proceeds of the disposal or sale of said securities;
- (5) a balance sheet and income account; and
- (6) all other information that may be relevant or that may be required by the commission.

For the purpose of enabling it to determine whether the proposed issue is in the public interest, in accordance with laws touching the issuance of securities by public utilities, and reasonably necessary in the operation and management of the business of the utility in order that the utility may provide adequate service and facilities, the commission also may consider the total outstanding capitalization of the utility, including the proposed issue, in relation to the total value of or investment in the property of the utility, including the property to be acquired by the proposed issue, as shown by the balance sheet, accounts, or reports of the utility, the records of the commission, or other evidence, and the character and proportionate amount of each kind of security, including the proposed issue, and the unamortized discount suffered by the utility in the sale of the outstanding securities. The commission shall make such further inquiry or investigation, hold such hearing or hearings, and examine such witnesses, books, papers, documents, or contracts as it may deem of importance in enabling it to reach a decision.

(b) An owner, officer, or agent of any public utility who knowingly violates this section, or knowingly makes any material

misrepresentation or misstatements in connection with this section, commits a Class D felony.

(Formerly: Acts 1913, c.76, s.91; Acts 1933, c.190, s.8.) As amended by Acts 1978, P.L.2, SEC.801.

IC 8-1-2-80

Stocks, bonds, commercial paper, and evidences of indebtedness; certificate of authority for issuance

Sec. 80. If the commission shall determine that such proposed issue complies with the provisions of this chapter, such authority shall thereupon be granted, and it shall issue to the public utility a certificate of authority stating:

(a) the amount of such stocks, certificates of stock, bonds, notes, or other evidences of indebtedness, reasonably necessary for the purposes for which they are to be issued and the character of the same; and

(b) the purposes for which they are to be issued and the property or services to be acquired thereby valued in detail.

Such public utility shall not apply the proceeds of such stock, bonds, notes, or other evidences of indebtedness as aforesaid to any purposes not specified in such certificate, nor issue such stock, bonds, notes, or other evidences of indebtedness in greater amounts than specified in such certificate. Nothing contained in this section shall prohibit the commission from giving its consent to the issue of bonds, notes, or other evidences of indebtedness for the reimbursement of moneys actually expended before May 1, 1913, from income for any of the purposes specified in section 78 of this chapter if, in the judgment of the commission, such consent should be granted, provided, application for such consent shall be made prior to January 1, 1915. For the purpose of enabling it to determine whether it should issue such an order, the commission shall make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents, or contracts as it may deem of importance in enabling it to reach a determination. The commission shall have power to impose such conditions upon a public utility in issuing of securities as it may deem reasonable. Such public utilities shall not, without the consent of the commission, apply said issue or any proceeds thereof to any purpose not specified in such order. Provided, however, that the commission shall have no power to authorize the capitalization of any franchise to be a corporation, or to authorize the capitalization of any franchise or the right to own, operate, or enjoy any franchise whatsoever, in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to any political subdivision thereof as the consideration for the grant of such franchise or right. The capitalization of a corporation formed by the merger or consolidation of two (2) or more corporations shall be subject to the approval of the commission, but in no event shall such capitalization exceed the sum of the corporations so consolidated, at the par value thereof, or such sums and any additional sum actually paid in cash; nor shall any contract for

consolidation or lease be capitalized in the stock of any corporation whatever; nor shall any corporation after May 1, 1913, issue any bonds against or as a lien upon any contract for consolidation or merger.

(Formerly: Acts 1913, c.76, s.92; Acts 1967, c.64, s.1.) As amended by P.L.59-1984, SEC.35.

IC 8-1-2-81

Stocks, bonds, commercial paper, or other evidences of indebtedness; state not obligated to pay or guarantee

Sec. 81. No provision of this chapter, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of Indiana to pay or guarantee in any manner whatsoever any stock or stock certificate or bond, note, or other evidence of indebtedness authorized, issued, or executed under the provisions of this chapter.

(Formerly: Acts 1913, c.76, s.93.) As amended by P.L.59-1984, SEC.36.

IC 8-1-2-82

Franchise; sale; transfer; assignment or encumbrance

Sec. 82. Any person or association of persons other than an existing public service corporation, which shall have, or may have hereafter become the owner or assignee of the rights, powers, privileges and franchises of any public utility created or organized by or under the law of this state, by purchase under a mortgage sale, sale in bankrupt proceedings, or sale under any judgment, order, decree or proceedings of any court in this state, including the courts of the United States sitting herein, shall within sixty (60) days after such purchase or assignment, organize anew by filing articles of incorporation as provided by law, and thereupon shall have the rights, privileges and franchises which such utility had, or was entitled to have, at the time of such purchase and sale. The new corporation may issue stock, certificates of stock, bonds, notes or other evidences of indebtedness for the property of the former corporation thus acquired, in an amount not to exceed the true value of such property, as found and determined by the commission, in accordance with the provisions hereof.

(Formerly: Acts 1913, c.76, s.94.)

IC 8-1-2-83

Franchises; sale; transfer; assignment or encumbrance; special rate contracts

Sec. 83. (a) No public utility, as defined in section 1 of this chapter, shall sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation, or contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation, without the approval of the commission after hearing. And no such public utility, except temporarily or in

case of emergency and for a period of not exceeding thirty (30) days, shall make any special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

(b) The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.

(c) Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

(d) Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract shall be effective for any purpose.

(Formerly: Acts 1913, c.76, s.95; Acts 1925, c.54, s.1.) As amended by P.L.59-1984, SEC.37; P.L.23-1988, SEC.24; P.L.8-1993, SEC.111.

IC 8-1-2-84

Merger or consolidation; acquisition, lease, sale, or encumbrance of property

Sec. 84. (a) With the consent and approval of the commission and with the authority of their stockholders as provided in this chapter, but not otherwise, any two (2) or more public utilities furnishing a like service or product and doing business in the same municipality or locality within Indiana, or any two (2) or more public utilities whose lines intersect or parallel each other within Indiana, may be merged and may enter into contracts with each other which will enable such public utilities to operate their plants or lines in connection with each other. Before any merger shall become effective there shall be filed with the commission proof that the

voting stockholders have authorized or consented to such merger. If the law under which the company is incorporated or reorganized so provides, then the authorization and consent of the holders of the majority of the voting stock shall be shown. In all other cases the consent of the holders of three-fourths (3/4) of the outstanding voting stock of the company shall be shown. Such authority and consent may be shown by filing with the commission a certified copy of the minutes of a stockholders' meeting or by filing with the commission a written consent of such holders or both. In case of such merger, union, or consolidation, dissenting stockholders shall apply to the commission within sixty (60) days after approval by the commission to have the value of their stock assessed and determined. Stockholders not so applying shall be held to have assented. Upon the determination of the value of the stock of such dissenting stockholder, the corporation in which they are stockholders may within sixty (60) days pay the dissenting stockholders for their stock the appraised value thereof, or may elect to abandon the merger, union, or consolidation by filing with the commission notice of such election.

(b) It shall not be necessary for any public utility merging, uniting, or consolidating to comply with such provisions of any law governing the procedure in the merger, union, or consolidation of corporations as are in conflict with the provisions of this chapter. This chapter shall not create any new right of merger or enlarge any such right but is intended only to prescribe and simplify the proceedings in mergers which are authorized by other statutes.

(c) Any such public utility may purchase or lease the used and useful property, plant, or business, or any part thereof, of any other such public utility at a price and on terms approved by the commission. Whenever, in the case of any such purchase, the amount to be paid by the purchaser for the property, plant, or business to be purchased shall be an amount in excess of five percent (5%) of the book cost to the purchaser of all the properties, plants, and business owned by it at the time application is made to the commission for approval of such purchase, or whenever, in the case of any such lease, the book cost to the lessor of the property, plant, or business to be leased shall be an amount in excess of five percent (5%) of the book cost to the lessee of all the properties, plants, and business owned by the lessee at the time application is made to the commission for approval of such lease, there shall be obtained from the holders of three-fourths (3/4) of the voting stock of such purchaser or lessee their consent, authority, and approval to such purchase or lease.

(d) Any such public utility may purchase or lease the used and useful property, plant, or business, or any part thereof, of a municipally owned utility, as used in this chapter, owned or operated by a city having a population of more than one hundred fifty thousand (150,000) but less than five hundred thousand (500,000), with the approval of the commission at a price or rental and on terms approved by the commission.

(e) Any such public utility may sell or lease its used or useful property, plant, or business, or any part thereof, to any other such public utility at a price and on terms approved by the commission. Whenever in the case of any such sale or lease the book cost to the seller or lessor of such property, plant, or business to be sold or leased shall be an amount in excess of five percent (5%) of the book cost to such seller or lessor of all the properties, plants, and business owned by it at the time application is made to the commission for approval of such sale or lease, there shall be obtained from the holders of three-fourths (3/4) of the voting stock of such seller or lessor their consent, authority, and approval to such sale or lease. Whenever in the case of any such sale or lease the book cost to the seller or lessor of such property, plant, or business to be sold or leased shall be an amount in excess of twenty percent (20%) of the book cost to such seller or lessor of all the properties, plants, and business owned by it at the time application is made to the commission for approval of such sale or lease, dissenting stockholders of such seller or lessor shall, if the sale or lease is consummated, be paid for their stock the appraised value thereof as determined by the commission. Dissenting stockholders in such a case shall, within sixty (60) days after publication of notice of the approval by the commission of such sale or lease, apply to the commission to have the value of their stock assessed and determined. Stockholders not so applying shall be held to have assented. Such publication of notice shall be given by the seller or lessor to its stockholders by publishing such notice once each week for three (3) successive weeks in a newspaper of general circulation printed in the English language and published in Marion County, Indiana. Upon determination of the value of the stock of such dissenting stockholders such seller or lessor may within sixty (60) days either pay the dissenting stockholders for their stock the appraised value thereof or elect to abandon the sale or lease by filing with the commission notice of its election to abandon.

(f) No such public utility shall encumber its used and useful property or business or any part thereof without the approval of the commission and the consent, authority, and approval of the owners of three-fourths (3/4) of its voting stock.

(g) Any public utility corporation upon the order of a majority of its board of directors and with the approval of the commission may acquire, purchase or lease any real or personal estate or other property of any other public utility not used and useful in the public service of such other public utility.

(h) Any public utility corporation, upon the order of a majority of its board of directors and with the approval of the commission, may sell and convey or lease to any other public utility corporation any of its real or personal estate or other property not used and useful in its public service.

(Formerly: Acts 1913, c.76, s.95.5; Acts 1925, c.54, s.2; Acts 1939, c.19, s.3; Acts 1973, P.L.61, SEC.1.) As amended by P.L.23-1988, SEC.25; P.L.1-1989, SEC.15; P.L.12-1992, SEC.57.

IC 8-1-2-85

Municipally owned utilities; securities; fee for issuance

Sec. 85. The commission shall charge every municipality receiving permission from it to issue any bonds, notes, or other securities an amount equal to twenty-five cents (\$.25) for each one hundred dollars (\$100) for such bonds, notes, or other securities, but in no case shall the fee be less than one hundred dollars (\$100). All of such fees assessed hereunder shall be paid to the secretary of the commission within thirty (30) days of the receipt of the bond proceeds by the municipality and only if the bonds, notes, or other securities are issued. The fees collected by the secretary shall be paid into the state treasury and deposited in the commission public utility fund account established under IC 8-1-6, as if they were fees collected under IC 8-1-6.

(Formerly: Acts 1913, c.76, s.96; Acts 1925, c.71, s.1; Acts 1947, c.317, s.1; Acts 1969, c.260, s.2.) As amended by Acts 1982, P.L.74, SEC.2; P.L.23-1988, SEC.26.

IC 8-1-2-86

Second utility serving same area; declaration of public convenience and necessity

Sec. 86. (a) No license, permit, or franchise shall be granted to any person, copartnership, or corporation to own, operate, manage, or control any plant or equipment of any public utility in any municipality where there is in operation a public utility engaged in similar service under a license, franchise, or permit without first securing from the commission a declaration, after a public hearing, of all parties interested, that public convenience and necessity require such second public utility; provided, that any municipality may purchase, condemn, and operate, or construct and operate, a utility in such municipality for the purpose of transportation, production, transmission, delivery, sale, and furnishing of heat, light, water, and/or power to such municipality, and/or the public in and within six (6) miles of the limits of such municipality, without the consent of said commission, although there is operating in said municipality a public utility engaged in a similar service under a license, franchise, or indeterminate permit.

(b) Any permit, license, or franchise in existence on May 1, 1913, which shall contain any term whatsoever interfering with the existence of a second public utility is hereby declared to be against public policy and is hereby amended in such manner as to permit a municipality to grant a license, franchise, or permit for the operation of such second public utility pursuant to the provisions of this chapter.

(Formerly: Acts 1913, c.76, s.97; Acts 1933, c.190, s.9.) As amended by P.L.59-1984, SEC.38.

IC 8-1-2-86.5

Territorial disputes between water utilities

Sec. 86.5. The commission, after notice and hearing, may, by

order, determine territorial disputes between all water utilities.
As added by P.L.79-1988, SEC.1.

IC 8-1-2-87

Gas utilities; necessity certificates; requirements

Sec. 87. (a) When used in this section, unless the context otherwise requires:

(1) The term "gas" means natural gas, artificial or manufactured gas, and mixed gas.

(2) The term "necessity certificate" means a certificate of public convenience and necessity issued by the commission pursuant to the provisions of this section, which certificate shall be deemed an indeterminate permit.

(3) The term "rural area" means territory within the state of Indiana that is outside the corporate limits of a municipality.

(4) The term "gas utility" means and includes any public utility selling or proposing to sell or furnish gas directly to any consumer or consumers within the state of Indiana for his, its or their domestic, commercial, or industrial use.

(5) The term "gas distribution service" means the furnishing or sale of gas directly to any consumer within the state of Indiana for his or its domestic, commercial, or industrial use.

(b) It is hereby declared that in order adequately to protect the public interest in the distribution of gas to consumers within the state of Indiana, it is necessary and desirable that to the extent provided in this section the holding of necessity certificates should be required as a condition precedent to the rendering of gas distribution service in rural areas of the state of Indiana.

(c) After February 26, 1945, no gas utility shall commence the rendering of gas distribution service in any rural area in the state of Indiana in which it is not actually rendering gas distribution service on February 26, 1945, without first obtaining from the commission a necessity certificate authorizing such gas distribution service, defining and limiting specifically the rural area covered thereby, and stating that public convenience and necessity require such gas distribution service within such rural area by such gas utility; and no gas utility required by this section to hold a necessity certificate for any rural area shall render gas distribution service within such a rural area to any extent greater than that authorized by such necessity certificate or shall continue to render gas distribution service within such a rural area if and after such necessity certificate has been revoked or transferred as in this section provided.

(d) Whenever any gas utility proposes to commence the rendering of gas distribution service in any rural area in which it is not actually rendering such service on February 26, 1945, it shall file with the commission a verified application for a necessity certificate covering such service by it. The commission shall, by regulations, prescribe the form of application and such application shall conform to such prescribed form. Within a reasonable time after the filing of any such application, the commission shall fix a time and place for a public

hearing thereon. Notice of such hearing shall be given in such manner and to such persons as is from time to time required by law or by the regulations of the commission. Such hearing shall be held in the manner prescribed for a hearing in sections 54 through 67 of this chapter, and the provisions of such sections so far as applicable shall apply to such hearing. Any person interested in such proceedings, including without limiting the generality of the foregoing any gas utility rendering gas distribution service within the general service area (including territory within and without municipalities) of which the rural area covered by the application may reasonably be deemed a part, shall be permitted to appear either in person or by attorney and offer evidence in support of or opposition to the application. The applicant shall, at all times, have the burden of proving by evidence each of the matters specified in this subsection as necessary to be found by the commission before a necessity certificate shall be issued by it. If the commission shall find from the evidence, including such evidence, if any, as the commission may cause to be introduced as a result of any investigation which it may have made relative to the matter, that the applicant therefor has lawful power and authority to obtain such necessity certificate and to render the proposed gas distribution service if it obtains such certificate, that he or it has the financial ability to provide the proposed gas distribution service, that public conveyance and necessity require the rendering of the proposed gas distribution service, and that the public interest will be served by the issuance of the necessity certificate to him or it, the application shall be granted, subject to such terms, restrictions, and limitations as the commission shall determine to be necessary and desirable in the public interest; otherwise the application shall be denied.

(e) Upon approval by the commission given after notice and public hearing given and held in the manner provided for in subsection (d) in cases of applications for necessity certificates, but not otherwise, any necessity certificate may:

- (1) be sold, assigned, leased, or transferred by the holder thereof to any person, firm, or corporation to whom a necessity certificate might be lawfully issued; or
- (2) be included in the property and rights encumbered under any indenture of mortgage or deed of trust of such holder.

(f) Any necessity certificate may, upon application by the holder to the commission, be revoked by the commission, in whole or in part, after notice given and hearing held in the manner provided for in subsection (d). Any necessity certificate may, after notice given and hearing held in the manner provided for in subsection (d), be revoked by the commission, in whole or in part, for the failure of the holder to comply with any applicable order, rule, or regulation prescribed by the commission in the exercise of its powers under this chapter, or with any term, condition, or limitation of such necessity certificate.

(Formerly: Acts 1913, c.76, s.97a; Acts 1945, c.53, s.1.) As amended by P.L.59-1984, SEC.39; P.L.8-1993, SEC.112.

IC 8-1-2-87.5

Transportation of gas; necessity certificate; application; public hearing; grounds for granting certificate; revocation

Sec. 87.5. (a) For purposes of this section, "transportation of gas" means physical transmission, exchange, backhaul, displacement, or any other means of transporting gas, including gathering.

(b) Any person, corporation, or other entity that:

(1) is engaged in the transportation of gas from outside Indiana for direct sale or delivery to any end use consumer or consumers within this state;

(2) is engaged in the transportation of gas solely within this state on behalf of any end use consumer or consumers; or

(3) is an end use consumer engaged in the transportation within this state of gas owned or acquired by such end use consumer for use in this state, other than transportation on the premises where the gas is consumed;

is a public utility as defined in section 1 of this chapter and must obtain a necessity certificate from the commission before it may engage in any activities described in this subsection. This subsection does not apply to a gas utility operating pursuant to an indeterminate permit or necessity certificate issued under section 87 of this chapter, nor to the production, sale, and gathering of natural gas produced in Indiana.

(c) As a condition for receiving the necessity certificate, such person, corporation, or entity desiring to engage in the activities described in subsection (b) shall file an application with the commission. The commission shall hold a public hearing on the application and provide notice in accordance with IC 8-1-1-8. The commission shall prescribe the form of the application, the procedure for the hearing, and the parties to whom notice is to be sent.

(d) Any interested person, including any gas utility authorized to render gas distribution service within the service area covered by the application, may appear either in person or by attorney and offer evidence in support of or in opposition to the application. The applicant has the burden of proving each of the matters specified in this section. The commission may conduct an investigation and introduce any evidence obtained as a result of the investigation at the hearing.

(e) The commission shall grant the necessity certificate only if the commission has found from the evidence that:

(1) the applicant has the power and authority to obtain the certificate and render the requested service;

(2) the applicant has the financial ability to provide the requested service;

(3) public convenience and necessity require the providing of the requested service giving consideration to the availability of gas service from any gas utility authorized to serve end use customers within the geographic area covered by the application; and

(4) the public interest will be served by the issuance of the

necessity certificate.

(f) The commission may revoke a necessity certificate in whole or in part after a public hearing is held if:

- (1) the holder fails to comply with any applicable order or rule prescribed by the commission;
- (2) the holder fails to comply with any term, condition, or limitation of the necessity certificate; or
- (3) the holder requests the commission to revoke the necessity certificate.

(g) An end use consumer determined to be a public utility under subsection (b) may not exercise the power of eminent domain granted under IC 8-1-8. The limitations contained in sections 76 through 81 of this chapter do not apply to issues of stock or certificates of stock, bonds, notes, or other evidence of indebtedness issued by an end use consumer determined to be a public utility under subsection (b).

(h) This section applies to sales or transportation of natural gas to end users under contracts or agreements entered into after May 31, 1985. It does not apply to sales or transportation of natural gas to end users under contracts or agreements entered into before June 1, 1985, or any renewals or extensions of those contracts or agreements.

As added by P.L.89-1985, SEC.1.

IC 8-1-2-87.6

Exemption of Indiana produced natural gas; petition and hearing on rates for purchase or transport

Sec. 87.6. (a) Except as provided in this section, the production, gathering, sale, or transportation of Indiana produced natural gas is exempt from this chapter.

(b) Any person, corporation, or other entity engaged in the production, gathering, sale, or transportation of natural gas produced in Indiana may petition the commission to:

- (1) require a gas utility certified under section 86 or 87 of this chapter to purchase or transport Indiana produced natural gas owned by the petitioning entity; and
- (2) set the rates for the purchase or transportation of that gas.

(c) Upon receiving a petition under subsection (b), the commission may order the gas utility to transport or purchase the gas, and shall conduct a public hearing to set the purchase or transportation rates. The commission may only require the purchase or transportation of Indiana produced natural gas that:

- (1) is of pipeline quality and reliability; and
- (2) is to be delivered to a facility of the transporting or purchasing local distribution company that has adequate capacity to accept and transport the volume of gas involved.

The commission shall provide notice of the hearing in accordance with IC 8-1-1-8. The commission shall prescribe the form of the petition, the procedures for the hearing, and the parties to whom notice is to be sent.

(d) If the sale of Indiana produced natural gas to an end use

consumer for consumption in the franchise territory of a gas utility with less than five thousand (5,000) customers detrimentally affects the other end use consumers in the utility's franchise territory, the utility may petition the commission to require the seller to instead sell the gas to that utility at a rate and under terms and conditions set by the commission.

(e) Any interested party may appear at a hearing conducted under subsections (c) and (d) either in person or by attorney and offer evidence in support of or in opposition to the petition. The commission may conduct an investigation and introduce any evidence obtained as a result of the investigation at the hearing.

(f) The commission may adopt rules under IC 4-22-2 to implement this section.

As added by P.L.81-1986, SEC.1.

IC 8-1-2-87.7

Gas utilities; tariffs; reasonableness factors

Sec. 87.7. (a) The commission may, on its own motion or upon petition of any customer, and after appropriate notice and hearing, order any gas utility subject to its jurisdiction to file or change one (1) or more gas transportation tariffs to better meet the needs of the utility's customers.

(b) The commission shall determine and set reasonable rates, terms, and conditions in the tariffs. In determining what is reasonable, the commission may consider the following:

- (1) The cost of providing the transportation service according to generally accepted cost of service principles.
- (2) The effects of the service on the consumers to whom it would be available.
- (3) The effects of the service on the industrial development of the state.
- (4) The effects of the transportation rate upon current customers of the utility.
- (5) The extent to which a transportation rate will aid the utility in retaining its existing load or create opportunities to lower the cost of gas supplies purchased on behalf of all ratepayers.
- (6) Whether or not the proposed tariff is a negotiated tariff between the utility and its customers.
- (7) The extent to which the availability of transportation services under the proposed tariff is restricted.
- (8) Any other factors bearing upon the tariff resulting from decisions of the Federal Energy Regulatory Commission, other rulings of the commission, or applicable case law.
- (9) The effect of contract obligations on the utility relating to unavoidable gas costs for which the utility will be responsible.
- (10) Whether or not the amount of transportation offered under the proposed tariff is limited other than for reasons necessitated by operational constraints.
- (11) Any other factors the commission considers appropriate.

As added by P.L.117-1987, SEC.1.

IC 8-1-2-88**Telephone companies; certificate of territorial authority**

Sec. 88. (a) When used in this section, unless the context otherwise requires:

(1) The term "telephone service" means that service provided by a public utility, as defined in this chapter whereby the transmission of intelligence between two (2) or more points within a single territorial area through the use of electricity is the principal intended use thereof and includes all telephone lines, facilities, or systems used in the rendition of such service.

(2) The term "telephone company" means any natural person, firm, association, corporation, or partnership owning, leasing, or operating any lines, facilities, or systems, used in the furnishing of telephone service within this state.

(3) The term "notice of hearing" means notice of the time, place, and purpose of the hearing, given by publication in accordance with IC 8-1-1-8.

(b) The commission shall have the power by order to require telephone companies to report, upon reasonable notice, in such manner as the commission shall prescribe by general rule, the territorial area or areas and the boundaries thereof within the state in which each such company now renders, is reasonably prepared to render, and proposes to render telephone service within a reasonable time. The commission shall have the power to issue to each such company for any territorial area or areas so reported and not covered by a municipal franchise or any indeterminate permit, a certificate of territorial authority. The certificate shall determine and define the area or areas in which each such company shall thereafter render telephone service. In cases of conflict involving two (2) or more telephone companies the commission, considering such reports separately, or by consolidation of two (2) or more or all, shall have the power to issue its certificate after notice of hearing and a hearing. After the issuance of such certificate no other telephone company shall render telephone service in the area or areas so determined and defined, except pursuant to a certificate granted by the commission, after notice of hearing and a hearing, that public convenience and necessity require that telephone service in any such area be rendered or offered by another company. Any telephone company, without a prior order by the commission, may voluntarily file with the commission a report of the territorial area or areas and the boundaries thereof within the state in which it renders, is reasonably prepared to render, and proposes to render telephone service within a reasonable time. Upon the filing of such voluntary report the commission shall have the power to issue its certificate of territorial authority to such company in like manner and with like effect as if such report had been required by order of the commission as hereinabove provided for in this section. Nothing contained herein or in any such certificate shall be construed to require any telephone company to cease rendering any telephone service in any territorial area being served by such telephone company prior to the issuance

of such certificate or to require any telephone company to render telephone service in any portion of any territorial area in which such telephone company does not render and does not propose to render telephone service.

(c) Upon approval by the commission given after notice of hearing and a hearing, but not otherwise, any territorial certificate may:

(1) be sold, assigned, leased, or transferred by the holder thereof to any telephone company to which a territorial certificate might be lawfully issued; or

(2) be included in the property and rights encumbered under any indenture of mortgage or deed of trust of such holder.

(d) Any certificate of territorial authority may, after notice of hearing and a hearing, be revoked by the commission, in whole or in part, for the failure of the holder thereof to furnish reasonably adequate telephone service within the area or areas determined and defined in such certificate of territorial authority.

(Formerly: Acts 1913, c.76, s.97b; Acts 1951, c.158, s.1; Acts 1971, P.L.82, SEC.1.) As amended by P.L.118-1987, SEC.1; P.L.8-1993, SEC.113.

IC 8-1-2-88.5

Telephone companies; less than 40,000 access lines; jurisdiction of commission; hearing; exemption

Sec. 88.5. (a) This section applies to each telephone company (as defined in section 88 of this chapter) that is certified for local exchange telephone service before January 1, 1995, and that is serving less than forty thousand (40,000) local exchange access lines. However, this section does not apply to rural telephone cooperatives formed under IC 8-1-17.

(b) Upon receiving a petition requesting the commission to issue an order under subsection (c) from:

(1) a telephone company; or

(2) the lesser of:

(A) ten percent (10%) of the current access line subscribers of the telephone company; or

(B) five hundred (500) subscribers;

the commission shall publish notice of the petition in a newspaper of general circulation published in each county in which the telephone company provides service.

(c) Unless within thirty (30) days after publication of the notice of the petition the office of the utility consumer counselor or a person with a substantial interest in the subject matter of the petition files with the commission a request for a hearing on the petition, a hearing is not required and the commission shall issue an order removing the telephone company from the jurisdiction of the commission for approval of rates, charges, and financing. If a hearing is requested, the party requesting the hearing has the burden of proving that public convenience and necessity require the commission to continue to have jurisdiction of approval of the

telephone company's rates, charges, and financing. If a hearing is requested by a competitor of the telephone company, the commission may impose sanctions in the form of awarding to the telephone company the costs, including reasonable attorney's fees, to be paid by the competitor if the commission finds that the request for a hearing or the pursuance of the request is frivolous. As used in this subsection, "frivolous" means that at least one (1) of the following conditions is met:

- (1) The competitor's primary purpose in initiating the proceeding was to harass, embarrass, or injure the telephone company.
- (2) The competitor had no reasonable basis to believe that the facts underlying its legal position were true.
- (3) The competitor's legal position was devoid of arguable legal merit.

(d) In considering a petition for exemption under this section, the commission may not find that public convenience and necessity require the petitioning or respondent telephone company to be subject to the commission's jurisdiction over its rates, charges, and financing unless the commission finds that no other telephone company has been issued a certificate of territorial authority under section 88 of this chapter to provide the functional equivalent of local exchange access service (as defined in IC 8-1-2.8-7) in any part of the petitioning or respondent telephone company's local exchange access service area.

(e) The commission may revoke the exemption or impose restrictions on the continued exercise of the exemption after notice and hearing either on its own motion, or after receiving a petition filed by:

- (1) the utility consumer counselor; or
- (2) the lesser of:
 - (A) ten percent (10%) of the telephone company's current access line subscribers; or
 - (B) five hundred (500) of the telephone company's subscribers;

if the person filing the petition proves that the public interest requires the revocation or restriction.

(f) A telephone company that is exempt from commission jurisdiction under this section shall file an annual report with the commission that includes:

- (1) an income statement and balance sheet in a form prescribed by the commission; and
- (2) any other information that the commission prescribes in rules adopted under IC 4-22-2.

The telephone company shall notify its customers that the income statement and balance sheet are on file with the commission.

(g) A telephone company that is exempted from commission jurisdiction under this section:

- (1) shall file its tariffs for rates and charges and any subsequent change in its tariffs with the commission; and

(2) remains subject to the commission's jurisdiction concerning only:

- (A) certificates of territorial authority under section 88 of this chapter;
- (B) payment of public utility fees under IC 8-1-6;
- (C) access and interconnection charges to other telephone companies under section 5 of this chapter;
- (D) customer service complaints under section 34.5(b) of this chapter; and
- (E) administration of federal law for which responsibility has been delegated to the commission by federal statute.

The commission shall not deny relief requested pursuant to federal law under clause (E) by a telephone company that is exempt from commission jurisdiction under this section solely because of the exemption.

As added by P.L.80-1988, SEC.1. Amended by P.L.77-1996, SEC.1; P.L.78-1997, SEC.1.

IC 8-1-2-88.6

Access charges for interconnection to local exchange facilities

Sec. 88.6. (a) As used in this section, "telephone company" means any individual, firm, partnership, cooperative organization, unincorporated association, or corporation engaged in the business of furnishing telecommunications service.

(b) Access charges paid by an interexchange carrier for interconnection to local exchange facilities must be reasonable as determined by the commission. A local exchange provider may not make or grant any undue preference or advantage concerning its pricing and provision of access to any telephone company providing interexchange telecommunications service.

As added by P.L.81-1988, SEC.1.

IC 8-1-2-88.7

Rates for telephone companies that are REA borrowers; determination; approval

Sec. 88.7. (a) As used in this section, "financial assistance" means:

- (1) a loan or loan guarantee; or
- (2) a lien accommodation provided to secure a loan made by another lender;

that is made by the Rural Electrification Administration of the United States Department of Agriculture (REA) or by the Rural Telephone Bank.

(b) As used in this section, "REA borrower" means a telephone company regulated under this chapter that is the recipient of financial assistance.

(c) In determining rates for a telephone company that is regulated under this chapter and that is an REA borrower, once the commission determines that property of the REA borrower is used and useful for the provision of telephone service and has been placed in service, the

commission shall approve rates to be charged by the REA borrower that will enable it to:

- (1) satisfy its reasonable expenses and obligations; and
- (2) earn a rate of return on the property sufficient to cover the REA borrower's cost of capital, including any financial assistance and the interest thereon.

(d) So long as there remains any unpaid portion of any financial assistance associated with the property of an REA borrower determined under subsection (c) to be used and useful and placed in service, the rates of the REA borrower shall be set at a level sufficient to repay the financial assistance regardless of any change in the regulatory status of the property, including, without limitation, the full or partial retirement of the property or any other change in the status of the property as reasonably necessary or used and useful.
As added by P.L.74-1991, SEC.1.

IC 8-1-2-89

Sewers and sewer systems; certificate of territorial authority; municipal or county acquisition and operation

Sec. 89. (a) As used in this section, unless the context otherwise requires, the following terms have the following meanings:

- (1) "Sewage disposal service" means any public utility service whereby liquid and solid waste, sewage, night soil, and industrial waste of any single territorial area is collected, treated, purified, and disposed of in a sanitary manner, and includes all sewage treatment plant or plants, main sewers, submain sewers, local and lateral sewers, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other equipment and appurtenances necessary or useful and convenient for the rendition of such service.
- (2) "Sewage disposal company" means any natural person, firm, association, corporation, or partnership owning, leasing, or operating any sewage disposal service within the rural areas of this state, and all provisions of this chapter pertaining to a public utility shall apply with equal force and effect to a sewage disposal company, except insofar as said provisions may be inconsistent with specific provisions of this section.
- (3) "Rural area" means territory lying within the state of Indiana and lying outside the corporate limits of a municipality.
- (4) "Certificate of territorial authority" means a certificate of convenience and necessity issued by the commission pursuant to this section, which said certificate shall be deemed an indeterminate permit, unless expressly conditioned otherwise by the commission when issued.
- (5) "Notice of hearing" means notice of the time, place, and purpose of a hearing, given by publication in at least one (1) newspaper of general circulation in each of the counties in which the particular sewage disposal company operates or proposes to operate and given also in writing by United States registered mail:

(A) to each other sewage disposal company operating in territory contiguous to the territory in which the particular sewage disposal company operates or proposes to operate;

(B) to each municipality in territory contiguous and nearest to the territory in which the particular sewage disposal company operates or proposes to operate; and

(C) to such other persons or entities which the commission may from time to time require by its rules and forms;

all such notices shall be so mailed as to be received by the recipients at least ten (10) days prior to any hearing, or as otherwise required by the commission.

(b) It is hereby declared to be in the public interest to provide for the orderly development and rendering of sewage disposal service in rural areas within the state of Indiana, and such public interest makes it necessary and desirable that to the extent provided herein the holding of a certificate of territorial authority should be required as a condition precedent to the rendering of such service, and that such operation be under the control, regulation, and supervision of the commission, and such sewage disposal companies shall not be subject to regulation by any municipality or county government or metropolitan regulatory body, or any branch or subdivisions thereof or substitute therefor in the form of special service districts, with the exception that said sewage disposal company shall be subject to the comprehensive plan, zoning, and subdivision requirements and regulations of the governmental units having jurisdiction in the area. However, all functions, powers, and duties of the state department of health and the water pollution control board shall remain unaffected by this section.

(c) No sewage disposal company shall commence the rendering of sewage disposal service in any rural area in the state of Indiana in which it is not actually rendering sewage disposal service, without first obtaining from the commission a certificate of territorial authority authorizing such sewage disposal service, finding that public convenience and necessity require such sewage disposal service within such rural area by such sewage disposal company, and defining and limiting specifically the rural area covered thereby. No sewage disposal company hereby required to hold such a certificate shall render any additional sewage disposal service within such rural area to any extent greater than that authorized by such certificate or shall continue to render sewage disposal service within such rural area if and after such certificate of territorial authority has been revoked or transferred as in this section provided, unless in such order of revocation or transfer the commission shall require continued service until a new sewage disposal company or municipality actually takes over such service. The commission shall not have the power to require extension of such service by any sewage disposal company into any additional territory than that defined and limited in such a certificate without the consent of such sewage disposal company.

(d) Whenever any sewage disposal company proposes to

commence the rendering of sewage disposal service in any rural area, it shall file with the commission a verified application for a certificate of territorial authority to cover the proposed service. The commission shall by rule prescribe the form of the application and the information to be contained therein, and such application by any such company shall conform to such prescribed form. The commission shall set the matter for hearing and notice of such hearing shall be given to the parties and in the manner defined in this section. Any city may, and upon petition to the commission shall, be made a party to any service proposal if its territorial limits lie within five (5) miles of the area to be serviced under this section.

(e) If, after notice of hearing and hearing on any application for a certificate of territorial authority, the commission shall find from the evidence introduced at such hearing, including any evidence which the commission shall have caused to be introduced as a result of any investigation which it may have made into the matter, that the applicant has proved:

- (1) lawful power and authority to apply for said certificate and to operate said proposed service;
- (2) financial ability to install, commence, and maintain said proposed service; and
- (3) public convenience and necessity require the rendering of the proposed service in the proposed rural area by this particular sewage disposal company; however, in the event the service is proposed for a proposed rural real estate addition, division, or development, or any part thereof, the reasonably expected sewage disposal service requirements of the anticipated residents may be found to constitute such public convenience and necessity;

then the certificate of territorial authority, defining and limiting the rural area to be covered thereby, shall be granted to the applicant, subject to such terms, restrictions, limitations, and conditions, including but not limited to a reasonable time in which to commence operations, as the commission shall determine to be necessary and desirable in the public interest.

(f) In cases of applications filed by two (2) or more sewage disposal companies seeking the issuance of a certificate of territorial authority for the same area or areas or any conflicting portions thereof, the commission may either consider such applications separately or by consolidation of two (2) or more or all within a single hearing at its discretion and shall have the power to issue its certificate after notice of hearing and hearing to any single qualified sewage disposal company for a particular rural area, or, in the event that the commission determines and finds that two (2) or more or all applicants seeking the same area or areas or any conflicting portions thereof are both or all qualified, then the commission shall have the power to determine which is the better or best qualified, or whether the same area or areas or any conflicting portions thereof shall be divided between or among such qualified applicants. However, in no event shall such area or areas or portions thereof be greater than that

for which the particular applicant applied, unless such sewage disposal company shall consent and agree in writing to such modification of its application and the issuance of such modified certificate.

(g) After the issuance of such certificate, no other sewage disposal company shall render sewage disposal service in the area or areas so determined and so defined in any certificate of territorial authority issued by the commission, except after notice of hearing and hearing, and the determination and finding by the commission that public convenience and necessity require that sewage disposal service in said same area or areas be also rendered or offered by an additional or another company, and the issuance of a certificate duly granted by the commission as provided in this section.

(h) A sewage disposal company shall be required to furnish reasonable adequate sewage disposal services and facilities for which said service and facilities it shall be entitled to charge reasonable, nondiscriminatory rates, subject to the jurisdiction of the commission for the purpose of fixing said rates to be charged to patrons of such sewage disposal company for sewage disposal service, and for such purpose the commission is given jurisdiction to proceed in the same manner and with like power as is provided by this chapter in the case of public utilities.

(i) To encourage the installation of sewage treatment plants, and sewers, mains, stations, and all other equipment and appurtenances for rendering sewage disposal service in rural areas in close proximity to municipalities, and to ensure that a sewage disposal company which had made such installation in such area can recover the cost of its investment, in the event that the area or areas or any part thereof included within the territory granted under a certificate of territorial authority shall be annexed by any municipality at any time within twelve (12) years from the date that such certificate was granted, a sewage disposal company operating under such certificate shall continue to operate under such certificate of territorial authority, subject to the exclusive jurisdiction and regulation of the commission, for the unexpired portion of such period of twelve (12) years from the date of granting such certificate, or, in the case of a determinate permit specifying a term shorter than twelve (12) years, then for the unexpired portion of such lesser period as specified by such permit from the date of granting such permit. However, the foregoing provisions in regard to continued operation within the corporate limits of a municipality after annexation shall not affect the right of the sewage disposal company to cease its operation of providing sewage disposal service within such annexed territory prior to the termination of said twelve (12) year or lesser determinate permit period, upon thirty (30) days written notice to the commission, the municipality, and all patrons.

(j) Upon approval by the commission given after notice of hearing and hearing, but not otherwise, any certificate of territorial authority may:

(1) be sold, assigned, leased, or transferred by the holder

thereof to any sewage disposal company to which a territorial certificate might be lawfully issued; or

(2) be included in the property and rights encumbered under any indenture of mortgage or deed of trust of such holder;

or any sewage treatment plant or plants, sewers, mains, stations, and equipment and appurtenances for the rendering of sewage disposal service, or any part thereof, may be sold, assigned, leased, or transferred by the holder thereof to any municipality if these assets lie within an area which shall have been annexed by such municipality or lie within the given radius of miles from the corporate limits of such municipality into which it is authorized to render such services, if such municipality is prepared to render a comparable sewage disposal service without loss of continuity of service, and if the terms of such sale, assignment, lease, or transfer are reasonable. However, once the commission has given its approval to such transaction and the transaction itself is actually consummated, the commission shall have no control over the sewage disposal service henceforth rendered by such municipality as a municipally owned utility (as defined in this chapter).

(k) Any certificate of territorial authority may, after notice of hearing and hearing, be revoked by the commission, in whole or in part, for the failure of the holder thereof to furnish reasonably adequate sewage disposal service within the area or areas determined and defined in such certificate of territorial authority, or for the failure of the holder thereof to comply with any applicable order or rule prescribed by the commission in the exercise of its powers under this chapter, or for failure to comply with any term, condition, or limitation of such certificate of territorial authority.

(l) After the commission revokes any certificate of territorial authority under subsection (k) or after the county board of health determines the existence of a serious health problem related to the sewage disposal facility, the county commissioners of the county in which the sewage disposal facility is located may acquire the facility, subject to the approval of the acquisition by the county council, except that the county commissioners may not acquire any facility already acquired by any city or town. The county commissioners shall acquire the sewage disposal facility by:

(1) gift, grant, purchase, or condemnation that is funded in the same manner that cities and towns fund sewage treatment acquisitions under IC 36-9; or

(2) a lease arrangement that is funded in the same manner that cities and towns fund leases of sewage disposal facilities under IC 36-9.

After acquisition, the county commissioners shall repair, operate, and maintain the sewage disposal facility and charge user fees for these services.

(Formerly: Acts 1913, c.76, s.97c; Acts 1957, c.313, s.2.) As amended by Acts 1976, P.L.25, SEC.1; Acts 1981, P.L.11, SEC.41; P.L.143-1985, SEC.186; P.L.23-1988, SEC.27; P.L.2-1992, SEC.76.

IC 8-1-2-90**Repealed**

(Repealed by Acts 1982, P.L.74, SEC.6.)

IC 8-1-2-91**Grant of licenses, permits, or franchises; state corporations or citizens**

Sec. 91. No license, permit or franchise to own, operate, manage or control any plant or equipment of any public utility shall be hereafter granted or transferred except to a corporation duly organized under the laws of the state of Indiana or to a citizen of such state.

(Formerly: Acts 1913, c.76, s.99.)

IC 8-1-2-92**Indeterminate licenses, permits, or franchises; purchase by municipality**

Sec. 92. Every license, permit, or franchise granted after April 30, 1913, to any public utility shall have the effect of an indeterminate permit subject to the provisions of this chapter, and subject to the provisions that the license, franchise, or permit may be revoked by the commission for cause or that the municipality may purchase the property of such public utility, as provided in this section. Any such municipality is authorized to purchase such property and every such public utility is required to sell such property at the value and according to the terms and conditions as provided in this chapter. If this chapter should be repealed or annulled, then all such indeterminate franchises, permits, or grants shall cease and become inoperative, and in place thereof such utility shall be reinstated in the possession and enjoyment of the license, permit, or franchise surrendered by such utility at the time of the issue of the indeterminate franchise, permit, or grant; but in no event shall such reinstated license, permit, or franchise be terminated within a less period than five (5) years from the date of the repeal or annulment of this chapter.

(Formerly: Acts 1913, c.76, s.100; Acts 1933, c.190, s.11.) As amended by P.L.59-1984, SEC.40.

IC 8-1-2-93**Acceptance of indeterminate licenses, permits, or franchises; effect**

Sec. 93. Any public utility accepting or operating under any indeterminate license, permit, or franchise granted after April 30, 1913, shall by acceptance of any such indeterminate license, permit, or franchise be deemed to have consented to a future purchase of its property including property located in contiguous territory within six (6) miles of the corporate limits of such municipality by the municipality in which such utility is located, at the value and under the terms and conditions as provided in this chapter, and shall thereby be deemed to have waived the right of requiring the necessity of such taking to be established by the judgment of a court, and to

have waived all other remedies and rights relative to condemnation, except such rights and remedies as are provided in this chapter and shall have been deemed to have consented to the revocation of its license, permit, or franchise by the commission for cause.

(Formerly: Acts 1913, c.76, s.102; Acts 1933, c.190, s.12.) As amended by P.L.59-1984, SEC.41.

IC 8-1-2-94

Repealed

(Repealed by Acts 1982, P.L.74, SEC.6.)

IC 8-1-2-94.1

Repealed

(Repealed by Acts 1982, P.L.74, SEC.6.)

IC 8-1-2-95

Repealed

(Repealed by Acts 1982, P.L.74, SEC.6.)

IC 8-1-2-95.1

Electric utilities; eminent domain against electric utility property prohibited

Sec. 95.1. Notwithstanding any other provision of this chapter, after February 29, 1980, a municipality, public utility, or corporation organized under IC 8-1-13 may not bring any action in the circuit or superior court of any county against any corporation organized under IC 8-1-13 or any public utility as defendant for the condemnation of its electric utility property for the use of the property in providing electric utility service.

As added by Acts 1980, P.L.69, SEC.2.

IC 8-1-2-96

Repealed

(Repealed by Acts 1982, P.L.74, SEC.6.)

IC 8-1-2-97

Repealed

(Repealed by Acts 1982, P.L.74, SEC.6.)

IC 8-1-2-98

Repealed

(Repealed by Acts 1982, P.L.74, SEC.6.)

IC 8-1-2-99

Repealed

(Repealed by Acts 1982, P.L.74, SEC.6.)

IC 8-1-2-100

Repealed

(Repealed by Acts 1982, P.L.74, SEC.6.)

IC 8-1-2-101**Municipal regulations; county executive's power; relocation of facilities**

Sec. 101. (a) Every municipal council or county executive shall have power:

- (1) To determine by ordinance the provisions, not inconsistent with this chapter or IC 8-1-11.1, upon which a public utility or department of public utilities created under IC 8-1-11.1 occupies the areas along, under, upon, and across the streets, highways, or other public property within such municipality or county, and such ordinance or other determination of such municipality or county executive shall be in force and prima facie reasonable. Upon complaint made by such public utility, department of public utilities, or by any qualified complainant, as provided in section 54 of this chapter, the commission shall set a hearing, as provided in sections 54 to 67 of this chapter, and if it shall find such ordinance or other determination to be unreasonable, such ordinance or other determination shall be void.
- (2) To require of any public utility, by ordinance, such additions and extensions to its physical plant within said municipality or county as shall be reasonable and necessary in the interest of the public, and to designate the location and nature of all such additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed, subject to review by the commission as provided in subdivision (1).
- (3) To provide for a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the provisions of this section.
- (4) The power and authority granted in this section shall exist and be vested in said municipalities or county executives, anything in this chapter to the contrary notwithstanding.

Provided, however, whenever, after a request by petition in writing of any public utility, department of public utilities, the city, or other political subdivision or other body, having jurisdiction of the matter, shall refuse or fail, for a period of thirty (30) days, to give or grant to such public utility or department of public utilities permission and authority to construct, maintain, and operate any additional construction, equipment, or facility, reasonably necessary for the transaction of the business of such public utility or department of public utilities and for the public convenience or interest, then such public utility or department of public utilities may file a petition with said commission for such right and permission, which petition shall state, with particularity, the construction, equipment, or other facility desired to be constructed and operated, and show a reasonable public necessity therefor, and also the failure or refusal of such city, political subdivision, or other body to give or grant such right or permission; and the commission shall thereupon give notice of the pendency of such petition, together with a copy thereof, to such city

or other political subdivision or body, and of the time and place of hearing of the matter set forth in such petition; and such commission shall have power to hear and determine such matters and to give or grant such right and permission and to impose such conditions in relation thereto as the necessity of such public utility or department of public utilities and the public convenience and interest may reasonably require. Provided, further, that when the relocation by a public utility or department of public utilities of any of its construction, equipment, or facility located within the corporate limits of two (2) or more adjoining cities is reasonably necessary for the public convenience or interest, and any or either of said cities fail or refuse to give or grant to such public utility or department of public utilities permission and authority to relocate such construction, equipment, or facility, any municipality which has given or granted to such public utility or department of public utilities permission and authority to relocate such construction, equipment, and facility, the public utility or department of public utilities may file a petition with said commission for such right and permission to which petition the city or cities failing or refusing to give or grant the same shall be made a respondent, and such public utility or department of public utilities if not the petitioner shall also be made a respondent, and said commission shall have power to hear and determine such matter and to give or grant such right and permission and to impose such conditions in relation thereto as the public convenience and interest may reasonably require; and if said commission shall give or grant such right and permission, no further public authority to make such relocation as authorized or to go on any street, alley, road, or highway in said city or cities necessary to be used therefor shall be required of said public utility or department of public utilities. All orders entered before June 30, 1931, by the commission in cases within the provisions of this section are hereby declared legal and valid.

(b) Subject to the commission's authority under subsection (a)(1) with respect to an unreasonable ordinance or other determination, the municipality or county executive may operate and maintain the streets, highways, and other public property in the municipality or county for the safety of the traveling public, and a municipality or county executive may manage the public right-of-way or require by ordinance fair and reasonable compensation on a competitively neutral and nondiscriminatory basis for occupation of the public right-of-way on a nondiscriminatory basis, including occupation by the municipality or county executive, if the compensation required is publicly disclosed by the municipality or county executive. Fair and reasonable compensation may not exceed the municipality's or county executive's direct, actual, and reasonably incurred costs of managing the public right-of-way caused by the public utility's or department of public utilities' occupancy. The management costs, which the municipality or county executive shall assign individually to the public utility or department of public utilities creating the management costs, must be limited to the direct, actual, and

reasonably incurred costs a municipality or county incurs in managing the public right-of-way. As used in this section, the term "management costs" includes but is not limited to the costs to the municipality or county of the following:

- (1) Registering occupants.
- (2) Verifying public right-of-way occupation.
- (3) Inspecting job sites and restoration projects.
- (4) Restoring work inadequately performed after providing notice and the opportunity to correct the work.
- (5) Administering a reasonable restoration ordinance that ensures that a public utility or department of public utilities adequately restores the right-of-way as near as is reasonably possible to the right-of-way's original condition.
- (6) Management costs associated with the implementation of an ordinance adopted under this section.

However, as used in this section, direct, actual, and reasonably incurred management costs do not include rents, franchise fees, or any other payment by a public utility or department of public utilities for occupation of the public right-of-way. As used in this section, the term "public right-of-way" does not include the airwaves above the streets, highways, or other public property within the municipality or county as those airwaves are used for cellular or other nonwire telecommunications or broadcast service.

(c) A municipality or county executive may not unreasonably delay a public utility's or department of public utilities' access to or use of a street, highway, or other public property within the municipality or county. However, subsection (a)(1) and this subsection do not limit a municipality or county executive's right to advance notification of and review of a public utility's or department of public utilities' occupation of a street, highway, or other public property within the municipality or county to ensure and protect the safety of the public.

(d) Nothing in this section may be construed to affect franchise agreements between a cable company and a municipality or county. *(Formerly: Acts 1913, c.76, s.110; Acts 1931, c.126, s.1.) As amended by P.L.59-1984, SEC.42; P.L.127-1998, SEC.1.*

IC 8-1-2-102

Political influence or activities; free or reduced rates or charges for products or services; violations; offense

Sec. 102. (a) The definitions set forth in IC 3-5-2 apply to this section.

(b) No public utility, or any agent or officer thereof, or any agent or officer of a political subdivision constituting a public utility, as defined in this chapter, may offer or give, for any purpose, to any political committee or any member or employee thereof, candidate for, or incumbent of, any office or position under the constitution or laws of Indiana, or under any political subdivision or to any person, at the request, or for the advantage of, any of them, any frank, privilege, or property withheld from any person for any product or

service produced, transmitted, delivered, furnished, or rendered, or to be produced, transmitted, delivered, furnished, or rendered by any public utility or any free product or service.

(c) No political committee, or member or employee thereof, or candidate for or incumbent of any office or position under the constitution or laws of Indiana or under any political subdivision may ask for or accept from any public utility, or any agent or officer thereof, or any agent or officer of any political subdivision constituting a public utility, as defined in this chapter, or use, in any matter or for any purpose, any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished, or rendered, or to be produced, transmitted, delivered, furnished, or rendered by any public utility.

(d) A person who knowingly violates this section commits a Class D felony.

(e) This chapter does not:

(1) prevent any public utility, carrier, or agent or officer thereof, from furnishing free or reduced service or transportation to any bona fide employee or officer thereof;

(2) prohibit any carrier from carrying free, or at reduced rates, agricultural experiment and demonstration cars or trains and the lecturers and necessary demonstrators accompanying such trains or cars; or

(3) prohibit any carrier from carrying free, or at reduced rates, its furloughed, pensioned, or superannuated employees, persons who have become disabled or infirm in its service, the remains of any person killed in its service, or the unremarried surviving spouses and dependent children under eighteen (18) years of age of persons who died in its service.

(Formerly: Acts 1913, c.76, s.111; Acts 1915, c.95, s.1; Acts 1973, P.L.63, SEC.1; Acts 1975, P.L.76, SEC.1.) As amended by Acts 1978, P.L.2, SEC.802; P.L.3-1997, SEC.424.

IC 8-1-2-103

Rates and charges; discriminatory overcharges and undercharges; offense; free service or special rate exceptions

Sec. 103. (a) No public utility, or agent or officer thereof, or officer of any municipality constituting a public utility, as defined in this chapter, may charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person for a like and contemporaneous service. A person who recklessly violates this subsection commits a Class A misdemeanor.

(b) Notwithstanding subsection (a), if a city of less than twenty thousand (20,000) in population according to the most recent federal decennial census, constituting a public water utility, and acting as a public utility prior to May 1, 1913, either as such city, or by any

commercial association, chamber of commerce, or committee with the consent of such city, entered into any agreement with any person engaged in manufacturing any articles of commerce to furnish free water for a certain limited time as an inducement to such person so engaged in manufacturing to locate the establishment or manufacturing plant of such person within such city, such city may carry out such agreement to furnish free water to such person for the period of time remaining, as stipulated in such contract. This chapter does not prohibit any public utility from supplying or furnishing free service or service at special rates to any municipality, or any institution or agency of such municipality, in cases where the supplying or furnishing of such free service or service at special rates is stipulated in any provision of the franchise under which such public utility was operating before May 16, 1919, or, in the event that such franchise shall have been surrendered, from supplying or furnishing such free service or service at special rates until such time as the franchise would have expired had it not been surrendered under this chapter; and it shall be the duty of any utility operating under any franchise, stipulating for free service or service at special rates to municipality, or any institution or agency of such municipality, to furnish such free service or service at special rates.

(c) This subsection applies to a public utility that provides water for public fire protection services in both a county containing a consolidated city and in portions of counties that are adjacent to the county containing a consolidated city. This subsection applies throughout the territory served by the public utility. In the case of a public utility furnishing water and beginning on January 1, 1994, the charges for the production, storage, transmission, sale and delivery, or furnishing of water for public fire protection purposes shall be included in the basic rates of the customers of the public utility. However, the construction cost of any fire hydrant installed after December 31, 1993, at the request of a municipality, township, county, or other governmental unit shall be paid for by or on behalf of the municipality, township, county, or other governmental unit. The change in the recovery of current revenue authorized by this section shall be reflected in a new schedule of rates to be filed with the commission at least thirty (30) days before the time the new schedule of rates is to take effect. The new schedule of rates shall:

- (1) eliminate fire protection charges billed directly to governmental units, other than charges for the construction cost for new hydrants installed after December 31, 1993; and
- (2) increase the rates charged each customer of the utility, based on equivalent meter size, by an amount equal to:
 - (A) the revenues lost from the elimination of such fire protection charges; divided by
 - (B) the current number of equivalent five-eighths (5/8) inch meters.

This change in the recovery of public fire protection costs shall not be considered to be a general increase in basic rates and charges of the public utility and is not subject to the notice and hearing

requirements applicable to general rate proceedings. The commission shall approve the new schedule of rates that are to be effective January 1, 1994.

(d) This subsection applies to a public utility or a municipally owned water utility that is not subject to subsection (c). Except as provided in subsection (e), in the case of a public utility or municipally owned water utility furnishing water, if the governing body of any municipality within the service area of the utility adopts an ordinance providing that costs shall be recovered under this subsection, the charges for the production, storage, transmission, sale and delivery, or furnishing of water for public fire protection purposes shall be included in the basic rates of all customers of the utility within the municipality. However, on or after a date specified in the ordinance, the construction cost of any fire hydrant installed at the request of a municipality, township, county, or other governmental unit that adopts an ordinance under this subsection shall be paid for by or on behalf of the municipality, township, county, or other governmental unit. The change in the recovery of current revenue authorized by the ordinance shall be reflected in a new schedule of rates to be filed with the commission at least thirty (30) days before the time the new schedule of rates is to take effect. The new schedule of rates shall:

- (1) eliminate fire protection charges billed directly to governmental units, other than charges for the construction cost for new hydrants installed on and after the date specified in the ordinance; and
- (2) increase the rates charged each customer of the utility, based on equivalent meter size, by an amount equal to:
 - (A) the revenues lost from the elimination of such fire protection charges; divided by
 - (B) the current number of equivalent five-eighths (5/8) inch meters.

This change in the recovery of public fire protection costs shall not be considered to be a general increase in basic rates and charges of the utility and is not subject to the notice and hearing requirements applicable to general rate proceedings. The commission shall approve the new schedule of rates that are to be effective on a date specified in the ordinance.

(e) This subsection applies to a municipally owned water utility in a city having a population of more than fifty thousand (50,000) but less than fifty-five thousand (55,000). The city may adopt a plan to recover costs as described in subsection (d) without passing an ordinance, if the plan applies only to customers of the utility residing in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). If the city wishes to adopt such a plan, the city shall file a new schedule of rates with the commission, but is not subject to commission approval of the rates.

(f) In the case of a change in the method of recovering public fire protection costs under an ordinance adopted under subsection (d):

(1) on or after July 1, 1997, a customer of the utility located outside the limits of a municipality whose property is not located within one thousand (1,000) feet of a fire hydrant (measured from the hydrant to the nearest point on the property line of the customer) must be excluded from the increase in rates attributable to the change and must not be included in the number of equivalent five-eighths (5/8) inch meters for purposes of subsection (d)(2)(B); or

(2) before July 1, 1997, the commission may:

(A) in the context of a general rate proceeding initiated by the utility; or

(B) upon petition of:

(i) the utility;

(ii) the governmental unit that passed the ordinance; or

(iii) an affected customer;

prospectively exclude public fire protection costs from the rates charged to customers located outside the limits of any municipality whose property is not located within one thousand (1,000) feet of a fire hydrant (measured from the hydrant to the nearest point on the property line of the customer) if the commission authorizes a simultaneous increase in the rates of the utility's other customers to the extent necessary to prevent a loss of revenues to the utility.

An increase in the rates of the utility's other customers under subdivision (2) may not be construed to be a general increase in basic rates and charges of the utility and is not subject to the hearing requirements applicable to general rate proceedings. This subsection does not prohibit the commission from adopting different methods of public fire protection cost recovery for unincorporated areas after notice and hearing within the context of a general rate proceeding or other appropriate proceeding.

(Formerly: Acts 1913, c.76, s.112; Acts 1915, c.137, s.1; Acts 1919, c.168, s.1.) As amended by Acts 1977, P.L.2, SEC.37; Acts 1978, P.L.2, SEC.803; Acts 1981, P.L.44, SEC.6; P.L.93-1993, SEC.1; P.L.79-1997, SEC.1; P.L.80-1997, SEC.1; P.L.2-1998, SEC.33; P.L.170-2002, SEC.57; P.L.176-2002, SEC.5.

IC 8-1-2-104

Rates and charges; undercharges by furnishing facilities to utility prohibited; exception

Sec. 104. It shall be unlawful for any public utility or any municipally-owned utility to demand, charge, collect or receive from any person, firm, limited liability company, or corporation, less compensation for any service rendered or to be rendered by said public or municipally-owned utility in consideration of the furnishing by said person, firm, limited liability company, or corporation of any part of the facilities incident thereto. However, nothing herein shall be construed as prohibiting any such public utility or municipally-owned utility from renting any facilities incident to its business.

(Formerly: Acts 1913, c.76, s.113; Acts 1933, c.190, s.20.) As amended by P.L.8-1993, SEC.114.

IC 8-1-2-105

Rates and charges; discrimination; penalty; exceptions

Sec. 105. (a) No public utility may make or give any undue or unreasonable preference or advantage to any person, or subject any person to any undue or unreasonable prejudice or disadvantage in any respect. A person who violates this section commits a Class B infraction.

(b) Nothing in this chapter shall prevent any public utility from furnishing service free or at reduced rates to any of its employees and officers or retired employees and officers or from providing energy assistance under IC 12-14-11 to persons eligible for that assistance. *(Formerly: Acts 1913, c.76, s.114; Acts 1917, c.161, s.1; Acts 1967, c.2, s.1.) As amended by Acts 1978, P.L.2, SEC.804; Acts 1979, P.L.18, SEC.3; P.L.384-1987(ss), SEC.7; P.L.3-1989, SEC.50; P.L.2-1992, SEC.77.*

IC 8-1-2-106

Rates and charges; undercharges by rebates or concessions prohibited; offense

Sec. 106. It is a Class B infraction for a person knowingly to solicit, accept, or receive any rebate, concession, or discrimination in respect to any service in or affecting or relating to any public utility or for any service in connection therewith, whereby any such service is rendered free or at a less rate than that named in the published schedules and tariffs in force as provided herein, or whereby any service or advantage is received other than is herein specified.

(Formerly: Acts 1913, c.76, s.115.) As amended by Acts 1978, P.L.2, SEC.805.

IC 8-1-2-107

Damages; loss or injury caused by violation

Sec. 107. If any public utility shall do, or cause to be done or permit to be done, any matter, act, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing required to be done by this chapter, such public utility shall be liable to the person, firm, limited liability company, or corporation injured thereby in the amount of damages sustained in consequence of such violation. Provided, that any recovery as in this section provided shall in no manner affect a recovery by the state of the penalty prescribed for such violation.

(Formerly: Acts 1913, c.76, s.116.) As amended by P.L.59-1984, SEC.43; P.L.8-1993, SEC.115.

IC 8-1-2-108

Officers and employees; violations; municipally owned utilities; annual reports

Sec. 108. (a) An officer, agent, or employee of any public utility, or a public utility (as defined in this chapter) who:

- (1) fails to fill out and return any blanks as required by this chapter;
- (2) fails to answer any question therein propounded;
- (3) knowingly gives a false answer to any such question or evades the answer to any such question where the fact inquired of is within his knowledge;
- (4) fails, upon proper demand, to exhibit to the commission, any commissioner, any administrative law judge, or any person authorized to examine the same, any book, paper, account, record, or memoranda of the public utility which is in his possession or under his control;
- (5) fails to keep his system of accounting, or any part thereof, which is required by the commission; or
- (6) refuses to do any act or thing in connection with the system of accounting when so directed by the commission or its authorized representative;

commits a Class B infraction.

(b) A municipally owned and operated utility under the jurisdiction of the commission for approval of rates and charges shall file with the commission, an annual report of the operation of said plant on forms to be furnished by the commission, which forms are to be substantially the same as for reports filed annually with the commission by public utilities. Such annual reports shall remain in the office of said commission as a public record. Whenever in this chapter public utilities are required to make reports to the commission or are otherwise subject to the commission, municipally owned utilities are exempted from making such reports and are not under the jurisdiction of the commission, except as otherwise provided.

(Formerly: Acts 1913, c.76, s.117; Acts 1933, c.190, s.21.) As amended by Acts 1977, P.L.99, SEC.1; Acts 1978, P.L.2, SEC.806; Acts 1979, P.L.84, SEC.4; P.L.23-1988, SEC.28; P.L.68-1990, SEC.1.

IC 8-1-2-109

General penalty provision

Sec. 109. A public utility that violates this chapter, or fails to perform any duty enjoined upon it, for which a penalty is not otherwise provided, commits a Class B infraction.

(Formerly: Acts 1913, c.76, s.118.) As amended by Acts 1978, P.L.2, SEC.807.

IC 8-1-2-110

Repealed

(Repealed by Acts 1982, P.L.74, SEC.6.)

IC 8-1-2-111

Repealed

(Repealed by Acts 1978, P.L.2, SEC.867.)

IC 8-1-2-112

Continuing acts as separate offenses

Sec. 112. Every day during which any public utility or any officer, agent, or employee thereof shall fail to observe and comply with any order or direction of the commission, or to perform any duty enjoined by this chapter, shall constitute a separate and distinct violation of such order or direction of this chapter, as the case may be.

(Formerly: Acts 1913, c.76, s.121.) As amended by P.L.59-1984, SEC.44.

IC 8-1-2-113

Emergency alteration, amendment, or suspension of rates or services

Sec. 113. (a) The commission may, when it considers necessary to prevent injury to the business or interests of the people or any public utility of this state in case of any emergency to be judged by the commission, temporarily alter, amend, or with the consent of the public utility concerned, suspend any existing rates, service, practices, schedules, and order relating to or affecting any public utility or part of any public utility in this state. The alterations, amendments, or suspensions of the rates, service, schedules, or practices made by the commission shall apply to one (1) or more of the public utilities in this state or to any portion thereof, as directed by the commission, and shall take effect at the time and remain in force for the length of time prescribed by the commission.

(b) The commission may adopt emergency rules under IC 4-22-2-37.1 to carry out this section.

(Formerly: Acts 1913, c.76, s.122; Acts 1947, c.315, s.1.) As amended by P.L.37-1989, SEC.3; P.L.1-1990, SEC.102.

IC 8-1-2-114

Accidents, investigation, and report

Sec. 114. Every public utility shall, whenever an accident attended with loss of human life occurs within this state upon its premises, or directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the commission. In the event of any such accident, the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith, which investigation shall be held in the locality of the accident unless, for greater convenience of those concerned, it shall order such investigation to be held at some other place; and said investigation may be adjourned from place to place as may be found necessary and convenient. The commission shall give due notice to the public utility of the time and place of the investigation.

(Formerly: Acts 1913, c.76, s.123.)

IC 8-1-2-115

Enforcement of law; recovery of forfeitures or penalties

Sec. 115. The commission shall inquire into any neglect or violation of the statutes of this state or the ordinances of any city or town by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of this chapter, as well as all other laws, relating to public utilities. Any forfeiture or penalty provided in this chapter shall be recovered and suit therein shall be brought in the name of the state of Indiana in the circuit or superior court where the public utility has its principal place of business. Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and, when so made, the action so commenced shall be prosecuted by the general counsel.

(Formerly: Acts 1913, c.76, s.124.) As amended by P.L.59-1984, SEC.45.

IC 8-1-2-116**Orders and decisions; compliance**

Sec. 116. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the rules, orders, acts, and regulations of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

(Formerly: Acts 1913, c.76, s.125.) As amended by P.L.59-1984, SEC.46.

IC 8-1-2-117**Rates, penalties, or forfeitures; recovery action**

Sec. 117. This chapter shall not have the effect to release or waive any right of action by the state or by any person for any right, penalty, or forfeiture which may have arisen before May 1, 1913, or which may arise under any statute of this state; and all penalties and forfeitures accruing under this chapter shall be cumulative and a suit for any recovery of one shall not be a bar to the recovery of any other penalty.

(Formerly: Acts 1913, c.76, s.126.) As amended by P.L.59-1984, SEC.47.

IC 8-1-2-118**Public service commission; traveling expenses and per diem**

Sec. 118. The members of said commission, its secretary and clerk, and such other persons as it may appoint or employ, as provided in this chapter, shall be entitled to receive from the state their actual necessary traveling expenses, which shall include the cost of transportation, hotel, telegraph, and telephone bills while traveling on the business of the commission, which amount shall be paid by the treasurer of state, on warrant of the auditor of state, upon an itemized statement thereof, sworn to by the party who incurred such expense in traveling, and after the same shall have been

approved by the commission.
(Formerly: Acts 1913, c.76, s.127.) As amended by P.L.59-1984, SEC.48.

IC 8-1-2-119

Repealed

(Repealed by Acts 1972, P.L.13, SEC.7.)

IC 8-1-2-120

(Repealed by Acts 1978, P.L.2, SEC.867.)

IC 8-1-2-121

Termination of residential electric or gas service

Sec. 121. (a) Notwithstanding any other provision of law, from December 1 through March 15 of any year, no electric or gas utility, including a municipally owned, privately owned, or cooperatively owned utility, shall terminate residential electric or gas service for persons who are eligible for and have applied for assistance under IC 12-14-11. The commission shall implement procedures to ensure that electric or gas utility service is continued while eligibility for such persons is being determined.

(b) Any electric or gas utility, including a municipally owned, privately owned, or cooperatively owned utility, shall provide any residential customer whose account is delinquent an opportunity to enter into a reasonable amortization agreement with such company to pay the delinquent account. Such an amortization agreement must provide the customer with adequate opportunity to apply for and receive the benefits of any available public assistance program. An amortization agreement is subject to amendment on the customer's request if there is a change in the customer's financial circumstances.

(c) The commission may establish a reasonable rate of interest which a utility may charge on the unpaid balance of a customer's delinquent bill that may not exceed the rate established by the commission under section 34.5 of this chapter.

(d) The commission shall adopt rules under IC 4-22-2 to carry out the provisions of this section.

(e) This section does not prohibit an electric or gas utility from terminating residential utility service upon a request of a customer or under the following circumstances:

- (1) If a condition dangerous or hazardous to life, physical safety, or property exists.
- (2) Upon order by any court, the commission, or other duly authorized public authority.
- (3) If fraudulent or unauthorized use of electricity or gas is detected and the utility has reasonable grounds to believe the affected customer is responsible for such use.
- (4) If the utility's regulating or measuring equipment has been tampered with and the utility has reasonable grounds to believe that the affected customer is responsible for such tampering.

As added by P.L.43-1983, SEC.10. Amended by P.L.41-1987, SEC.6;

P.L.2-1992, SEC.78.

IC 8-1-2-122

Notice of termination of service; requisites

Sec. 122. (a) As used in this section:

"Dwelling" means an individual residence, including a mobile home or trailer, or a room or combination of rooms, with facilities for living for a single household.

"Heating season" means the period beginning on November 1 of any year and ending on the following April 1.

(b) A utility, including a municipally owned utility, that provides energy or fuel to an occupied dwelling may not, during the heating season, terminate service to the dwelling because of the failure of the customer to pay his energy or fuel bills until fourteen (14) days after it serves notice upon the customer of its intent to terminate service.

(c) A notice served under this section must be in language that is clear, concise, and easily understandable to a layman. It must, in separately numbered paragraphs:

- (1) indicate the date on which service will be terminated;
- (2) state the reason and factual basis for the termination of service;
- (3) list the telephone number of the utility office that the customer may call during regular business hours in order to question the proposed termination of service or to seek information concerning his rights; and
- (4) state that the customer may refer to the pamphlet furnished to him under 170 IAC 4-1-18 for information as to his rights.

(d) Service of a notice under this section must be by:

- (1) mail addressed to the customer; or
- (2) personal delivery to the customer or to a responsible member of his household;

at the address listed for the customer in the records of the utility.

(e) No notice may be served under this section before the date on which the customer's account becomes delinquent.

As added by P.L.43-1983, SEC.11.

IC 8-1-2-123

Reserved

IC 8-1-2-124

Reserved

IC 8-1-2-125

"Not-for-profit utilities" defined; services and facilities; reasonable and just charges; not-for-profit sewer utilities

Sec. 125. (a) As used in this section, "not-for-profit utility" means a public water or sewer utility that:

- (1) does not have shareholders;
- (2) does not engage in any activities for the profit of its trustees,

directors, incorporators, or members; and

(3) is organized and conducts its affairs for purposes other than the pecuniary gain of its trustees, directors, incorporators, or members.

(b) A not-for-profit utility shall be required to furnish reasonably adequate services and facilities. The charge made by any not-for-profit utility for any service rendered or to be rendered, either directly or in connection with the service, must be nondiscriminatory, reasonable, and just. Each discriminatory, unjust, or unreasonable charge for the service is prohibited and unlawful.

(c) A reasonable and just charge for water or sewer service within the meaning of this section is a charge that will produce sufficient revenue to pay all legal and other necessary expense incident to the operation of the not-for-profit utility's system, including the following:

- (1) Maintenance and repair costs.
- (2) Operating charges.
- (3) Interest charges on bonds or other obligations.
- (4) Provision for a sinking fund for the liquidation of bonds or other evidences of indebtedness.
- (5) Provision for a debt service reserve for bonds or other obligations in an amount not to exceed the maximum annual debt service on the bonds or obligations.
- (6) Provision of adequate funds to be used as working capital.
- (7) Provision for making extensions and replacements.
- (8) The payment of any taxes that may be assessed against the not-for-profit utility or its property.

The charges must produce an income sufficient to maintain the not-for-profit utility's property in sound physical and financial condition to render adequate and efficient service. A rate too low to meet these requirements is unlawful.

(d) Except as provided in subsection (e), a not-for-profit public sewer utility may require connection to its sewer system of property producing sewage or similar waste and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures, if:

- (1) there is an available sanitary sewer within three hundred (300) feet of the property line; and
- (2) the utility has given written notice by certified mail to the property owner at the address of the property at least ninety (90) days before the date for connection stated in the notice.

(e) A not-for-profit sewer utility may not require connection to its sewer system of property producing sewage or similar waste and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures if the source of the waste is more than five hundred (500) feet from the point of connection to its sewer system.

As added by P.L.82-1986, SEC.1. Amended by P.L.35-1990, SEC.25; P.L.78-1996, SEC.1.

IC 8-1-2-126

Electrical power generated outside the United States

Sec. 126. A public utility or municipally owned utility may not purchase or transmit any electrical power generated in a country outside of the borders of the United States, unless the commission determines that the purchase or transmission is necessary for the health and welfare of the citizens of Indiana.

As added by P.L.119-1987, SEC.1.

IC 8-1-2-127

Customer billing; indication of amount of federal energy tax

Sec. 127. A public utility shall:

- (1) indicate separately and conspicuously on each customer's bill the total charge attributable to any tax imposed under federal law on the basis of British Thermal Units or any other measure of the energy content of energy consumed by the customer during the billing period; and
- (2) identify the charge described under subdivision (1) as a federal energy tax.

As added by P.L.35-1993, SEC.2.